

**Minutes
URBAN COUNTY PLANNING COMMISSION
SUBDIVISION ITEMS**

May 13, 2010

- I. CALL TO ORDER** - The meeting was called to order at 1:36 p.m. in the Council Chambers, Urban County Government Building, 200 East Main Street, Lexington, Kentucky.

Planning Commission Members Present – Frank Penn, Chair; Carolyn Richardson, Vice-Chair; Lynn Roche-Phillips (arrived at 1:40 p.m and departed at 3:40 p.m.); Joan Whitman; Marie Copeland; Derek Paulsen; Mike Cravens; Mike Owens; William Wilson and Ed Holmes. Patrick Brewer was absent.

Planning Staff Present – Chris King, Director; Bill Sallee, Barbara Rackers, Tom Martin, Chris Taylor, Cheryl Gallt, Traci Wade, Denice Bullock and Kenzie Gleason. Other staff members in attendance were: Hillard Newman, Division of Engineering; Firefighter Allen Case, Division of Fire & Emergency Services; Tim Queary, Division of Streets, Roads and Forestry; Rochelle Boland, Department of Law; Jeff Neal, Traffic Engineering; Bob Carpenter, Division of Building Inspection and Lieutenant Gregg Jones, Lexington Division of Police.

- II. APPROVAL OF MINUTES** – Chairman Penn reminded the members that there was no prior Planning Commission meeting minutes to be considered at this time.

- III. POSTPONEMENTS OR WITHDRAWALS** – Requests for postponement and withdrawal were considered at this time.

Planning Commission Comment – Chairman Penn asked if anyone in the audience or on the staff wished to make a request for postponement or withdrawal.

- a. PLAN 2010-13P: FAIRWAY LANDS, UNIT 11 (5/13/10)* - located at 350 Henry Clay Boulevard.
(Council District 5)

(EA Partners)

Representation – Rory Kahly, EA Partners, was present representing the applicant, and requested postponement of PLAN 2010-13P to the June 10, 2010, Planning Commission meeting.

Audience Comment – Chairman Penn asked if anyone in the audience wished to discuss this request for postponement. There was no response.

Action - A motion was made by Ms. Richardson, seconded by Ms. Whitman, and carried 9-0 (Roche-Phillips and Brewer absent) to postpone PLAN 2010-13P to the June 10, 2010, Planning Commission meeting.

- b. DP 2006-65: BLACKFORD PROPERTY, PHASES 1 & 2 (AMD.) (6/24/10)* – located at 6600 Man O' War Boulevard (a portion of).
(Council District 12)

(EA Partners)

Representation – Rory Kahly, EA Partners, was present representing the applicant, and requested postponement of DP 2006-65 to the June 10, 2010, Planning Commission meeting.

Audience Comment – Chairman Penn asked if anyone in the audience wished to discuss this request for postponement. There was no response.

Action - A motion was made by Mr. Owens, seconded by Ms. Richardson, and carried 9-0 (Roche-Phillips and Brewer absent) to postpone DP 2006-65 to the June 10, 2010, Planning Commission meeting.

- c. DP 2010-15: GESS PROPERTY, UNIT 8 (6/29/10)* - located at 840 Hays Boulevard and 4115 Sperling Drive (a portion of).
(Council District 7)

(EA Partners)

Representation – Rory Kahly, EA Partners, was present representing the applicant, and requested postponement of DP 2010-15 to the July 8, 2010, Planning Commission meeting.

Audience Comment – Chairman Penn asked if anyone in the audience wished to discuss this request for postponement. There was no response.

Action - A motion was made by Mr. Cravens, seconded by Mr. Owens, and carried 9-0 (Roche-Phillips and Brewer absent) to postpone DP 2010-15 to the July 8, 2010, Planning Commission meeting.

- d. PLAN 2010-28F: HIGBEE MILL RESERVE, SECTION 2, LOT 3G (6/22/10)* - located at 4204 & 4172 Reserve Road.
(Council District 9)

(Banks Engineering)

Staff Comments – Mr. Martin said that the staff had received an email correspondence from the applicant, requesting that PLAN 2010-28F be withdrawn.

* - Denotes date by which Commission must either approve or disapprove plan.

Audience Comment – Chairman Penn asked if anyone in the audience wished to discuss this request for withdrawal. There was no response.

Action - A motion was made by Mr. Owens, seconded by Ms. Whitman, and carried 9-0 (Roche-Phillips and Brewer absent) to accept the withdrawal of PLAN 2010-28F.

- e. PLAN 2009-38F: THE DAVIS FAMILY CHILDREN'S IRREVOCABLE TRUST (RABBIT RUN) (AMD) (7/8/09)* – located at 1950 Fort Harrods Drive and 3598 Rabbit's Foot Trail. (Council District 9) **(EA Partners)**

Staff Comments – Mr. Sallee noted that PLAN 2009-38F had previously been granted a 1-year extension by the Planning Commission at their April meeting, and said that it was inadvertently copied on to today's agenda. He then said that the staff would request that this item be removed from consideration at today's meeting.

Planning Commission Question – Chairman Penn asked if this item should be acted upon. Mr. Sallee replied affirmatively, and noted that the Planning Commission had previously approved this extension at the April meeting. Mr. Penn then clarified that a motion should be made that would remove this item from consideration.

Audience Comment – Chairman Penn asked if anyone in the audience wished to discuss this request for removal. There was no response.

Action - A motion was made by Ms. Richardson, seconded by Ms. Whitman, and carried 9-0 (Roche-Phillips and Brewer absent) to remove PLAN 2009-38F from consideration at today's meeting.

- IV. **LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, May 6, 2010, at 8:30 a.m. The meeting was attended by Commission members: Mike Cravens, Mike Owens, Carolyn Richardson, Derek Paulsen and Marie Copeland. Committee members in attendance were: Hillard Newman, Division of Engineering; and Jeff Neal, Division of Traffic Engineering. Staff members in attendance were: Bill Sallee, Tom Martin, Chris Taylor, Cheryl Galt, Traci Wade, Denice Bullock, Kenzie Gleason, and Barbara Rackers, as well as Firefighter Allen Case, Division of Fire & Emergency Services; Rochelle Boland, Law Department, Amelia Armstrong, Board of Architectural Review and Paul Hockensmith, Addressing Office. The Committee made recommendations on plans as noted.

General Notes

The following automatically apply to all plans listed on this agenda unless a waiver of any specific section is granted by the Planning Commission.

- 1. All preliminary and final subdivision plans are required to conform to the provisions of Article 5 of the Land Subdivision Regulations.*
- 2. All development plans are required to conform to the provisions of Article 21 of the Zoning Ordinance.*

- A. **CONSENT AGENDA - NO DISCUSSION ITEMS** – Following requests for postponement or withdrawal, items requiring no discussion will be considered.

Criteria:

- (1) the Subdivision Committee recommendation is for approval, as listed on this agenda; and
- (2) the Petitioner is in agreement with the Subdivision Committee recommendation and the conditions listed on the agenda; and
- (3) no discussion of the item is desired by the Commission; and
- (4) no person present at this meeting objects to the Commission acting on the matter without discussion; and
- (5) the matter does not involve a waiver of the Land Subdivision Regulations.

Requests can be made to remove items from the Consent Agenda:

- (1) due to prior postponements and withdrawals,
- (2) from the Planning Commission,
- (3) from the audience, and
- (4) from Petitioners and their representatives.

Note: Ms. Roche-Phillips arrived at this time.

At this time, Chairman Penn requested that the Consent Agenda items be reviewed. Mr. Sallee identified the following items appearing on the Consent Agenda, and oriented the Commission to the location of these items on the regular Meeting Agenda. He noted that the Subdivision Committee had recommended conditional approval of many of these items. (A copy of the Consent Agenda is attached as an appendix to these minutes).

1. PLAN 2010-32P: SUNNY SLOPE, UNIT 3-J & A PORTION OF UNIT 1 (AMD) (7/4/10)* - located on Waveland Museum Lane. (Council District 9) **(Hall-Harmon)**

* - Denotes date by which Commission must either approve or disapprove plan.

Note: The purpose of this amendment is to revise the note governing timing of the construction of Waveland Museum Lane.

The Subdivision Committee Recommended: Approval, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
 2. Urban County Traffic Engineer's approval of street cross-sections and access.
 3. Building Inspection's approval of landscaping and required street tree information.
 4. Approval of street addresses as per e911 staff.
 5. Addition of Final Record Plat information for the property.
 6. Denote construction access.
 7. Denote source of contours.
 8. Denote floodplain elevation.
 9. Adjacent property record plat reference.
 10. Denote all private utility providers.
 11. Denote linear street right-of-way.
 12. Denote average lot size.
 13. Denote approved plan information for Area D.
 14. Clarify note #25.
 15. Clarify relocated access to cell tower site.
 16. Resolve extent of Waveland Museum Lane construction and access to adjoining undeveloped property.
2. PLAN 2010-33F: MINNIFIELD LEESTOWN PROPERTY (7/4/10)* - located at 3364 Leestown Road.
(Council District 2) **(Eagle Engineering)**
- The Subdivision Committee Recommended: Approval, subject to the following requirements:
1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
 2. Urban County Traffic Engineer's approval of street cross-sections and access.
 3. Building Inspection's approval of landscaping and required street tree information.
 4. Approval of street addresses as per e911 staff.
 5. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
 6. Denote adjoining lots with dashed lines.
 7. Denote source of FEMA information.
 8. Denote private utility providers.
 9. Denote street frontage in site statistics.
 10. Add cross-section directional tic mark.
 11. Remove buildings and solid lines internal to lots from plan face.
 12. Correct 20' building line along Leestown Road.
 13. Delete extraneous information beyond adjacent property.
3. PLAN 2010-34F: TUSCANY, UNIT 4-A (SUMMERFIELD) (AMD) (7/4/10)* - located at 1970 Winchester Road (a portion of). (Council District 6) **(EA Partners)**

Note: The purpose of this amendment is to add 7 lots and reduce the building line to 20'.

The Subdivision Committee Recommended: Approval, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
 2. Urban County Traffic Engineer's approval of street cross-sections and access.
 3. Building Inspection's approval of landscaping and required street tree information.
 4. Approval of street addresses as per e911 staff.
 5. Urban Forester's approval of tree protection area(s).
 6. Department of Environmental Quality's approval of environmentally sensitive areas (steep slopes).
 7. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
 8. Denote: No building permits will be issued on lots 109 and 13 until an easement minor plat is recorded or as released by the Urban County Council.
 9. Document that the additional sewer taps have been installed for all lots to the approval of the Division of Engineering.
4. PLAN 2010-35F: TUSCANY, UNIT 4-B (SUMMERFIELD) (AMD) (7/4/10)* - located at 1970 Winchester Road (a portion of). (Council District 6) **(EA Partners)**

Note: The purpose of this amendment is to add 4 lots and reduce the building line to 20'.

The Subdivision Committee Recommended: Approval, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.

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2. Urban County Traffic Engineer's approval of street cross-sections and access.
 3. Building Inspection's approval of landscaping and required street tree information.
 4. Approval of street addresses as per e911 staff.
 5. Urban Forester's approval of tree protection area(s).
 6. Department of Environmental Quality's approval of environmentally sensitive areas (steep slopes).
 7. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
 8. Denote: No building permits will be issued on lot 47 until an easement minor plat is recorded or as released by the Urban County Council.
 9. Document that the additional sewer taps have been installed for all lots to the approval of the Division of Engineering.
5. PLAN 2010-36F: TUSCANY, UNIT 4-C (SUMMERFIELD) (AMD) (7/4/10)* - located at 1970 Winchester Road (a portion of). (Council District 6) **(EA Partners)**

Note: The purpose of this amendment is to add 4 lots.

The Subdivision Committee Recommended: Approval, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
 2. Urban County Traffic Engineer's approval of street cross-sections and access.
 3. Building Inspection's approval of landscaping and required street tree information.
 4. Approval of street addresses as per e911 staff.
 5. Urban Forester's approval of tree preservation area(s).
 6. Department of Environmental Quality's approval of environmentally sensitive areas.
 7. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
 8. Reference FEMA Letter of Map Revision on plan.
 9. Revise note #11.
 10. Addition of 25' floodplain setback on Lots 29 and 30.
 11. Denote: No building permits will be issued on lots 24, 29, 35 and 40 until an easement minor plat is recorded or as released by the Urban County Council.
 12. Document that the additional sewer taps have been installed for all lots to the approval of the Division of Engineering.
6. PLAN 2010-37F: TUSCANY, UNIT 4-D (SUMMERFIELD) (AMD) (7/4/10)* - located at 1970 Winchester Road (a portion of). (Council District 6) **(EA Partners)**

Note: The purpose of this amendment is to add 5 lots.

The Subdivision Committee Recommended: Approval, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
 2. Urban County Traffic Engineer's approval of street cross-sections and access.
 3. Building Inspection's approval of landscaping and required street tree information.
 4. Addressing Office's approval of street names and addresses.
 5. Urban Forester's approval of tree protection area(s).
 6. Department of Environmental Quality's approval of environmentally sensitive areas.
 7. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
 8. Denote: No building permits will be issued on lots 51, 55 and 60 until an easement minor plat is recorded or as released by the Urban County Council.
 9. Document that the additional sewer taps have been installed for all lots to the approval of the Division of Engineering.
7. PLAN 2010-38F: TUSCANY, UNIT 4-F (SUMMERFIELD) (AMD) (7/4/10)* - located at 1970 Winchester Road (a portion of). (Council District 6) **(EA Partners)**

Note: The purpose of this amendment is to add 3 lots.

The Subdivision Committee Recommended: Approval, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Approval of street addresses as per e911 staff.
5. Urban Forester's approval of tree protection area(s).
6. Department of Environmental Quality's approval of environmentally sensitive areas.

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7. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
 8. Denote Flood Protection Elevation for lot 75.
 9. Denote: No building permits will be issued on lots 68 and 72 until an easement minor plat is recorded or as released by the Urban County Council.
 10. Document that the additional sewer taps have been installed for all lots to the approval of the Division of Engineering.
8. PLAN 2010-39F: BRIGHTON EAST TOWNHOMES (7/4/10)* - located at 3393 Sanibel Drive.
(Council District 6) **(EA Partners)**

The Subdivision Committee Recommended: Approval, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
 2. Urban County Traffic Engineer's approval of street cross-sections and access.
 3. Building Inspection's approval of landscaping and required street tree information.
 4. Approval of street addresses as per e911 staff.
 5. Urban Forester's approval of tree protection area(s).
 6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
 7. Addition of street cross-section for Sanibel Drive.
 8. Denote: Front-facing garages must be set back at least 20' behind the sidewalk.
 9. Delete note #10.
 10. Denote McFarland Lane as public right-of-way.
9. PLAN 2010-40F: SHARKEY PROPERTY, UNIT 1 (A PORTION OF) (AMD) (7/4/10)* - located at 1700 Leestown Road (a portion of). (Council District 2) **(EA Partners)**

Note: The purpose of this amendment is to revise the street cross-sections.

The Subdivision Committee Recommended: Approval, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
 2. Urban County Traffic Engineer's approval of street cross-sections and access.
 3. Building Inspection's approval of landscaping and required street tree information.
 4. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
 5. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
 6. Correct cross-section "G-G" (delete "varies").
 7. Addition of conditional zoning restrictions.
 8. Correct parent plat notation.
 9. Add additional cross-sections to reflect as-built conditions.
 10. Revise cross-section "E-E" to reflect minimum sidewalk width.
10. PLAN 2004-226F: HIGBEE MILL RESERVE (7/13/10)* - located at 4180-4290 Harrodsburg Road.
(Council District 9) **(Eagle Engineering)**

Note: The Planning Commission originally approved this plan on September 9, 2004; reapproved this plan on October 13, 2005; granted a one-year extension on September 14, 2006 and September 13, 2007; and reapprovals were granted on October 9, 2008 and February 12, 2009, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Addition of utility and streetlight easements, as required by the utility companies and the Urban County Traffic Engineer.
5. Addition of street addresses and names.
6. Urban Forester's approval of tree preservation plan.
7. Greenspace Planner's approval of greenspace, greenways, and bike/pedestrian facilities.
8. Environmental Planner's approval of treatment of environmentally sensitive areas.
9. Addition of reciprocal parking and access note.
10. Denote: This property will be developed in accordance with the approved final development plan.
11. Review by the Technical Committee prior to plan signature.

The applicant has requested reapproval of this plan.

The Subdivision Committee Recommended Reapproval: subject to the previous conditions; deleting conditions #6, 7, 8 and 11.

* - Denotes date by which Commission must either approve or disapprove plan.

11. PLAN 2009-25F: RESERVE AT WALNUT GROVE, UNIT 1-A (8/1/10)* - located at 3820 Hatfield Lane (a portion of).
(Council District 12) **(EA Partners)**

Note: The Planning Commission originally approved this plan on May 14, 2009, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Addition of utility and streetlight easements, as required by the utility companies and the Urban County Traffic Engineer.
8. Denote: This property shall be developed in accordance with the approved final development plan.
9. Addition of exaction information.
10. Document compliance with minimum open space requirements.
11. Resolve access to lots from private streets, and the reduction of open space.

Note: The applicant now requests an extension.

The Staff Recommends: Approval of the extension, subject to the previous conditions.

12. PLAN 2009-26F: RESERVE AT WALNUT GROVE, UNIT 1-B (8/1/10)* - located at 3820 Hatfield Lane (a portion of).
(Council District 12) **(EA Partners)**

Note: The Planning Commission originally approved this plan on May 14, 2009, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Addition of utility and streetlight easements, as required by the utility companies and the Urban County Traffic Engineer.
8. Denote: This property shall be developed in accordance with the approved final development plan.
9. Addition of exaction information.
10. Document compliance with minimum open space requirements.
11. Resolve access to lots from private streets, and the reduction of open space.

Note: The applicant now requests an extension.

The Staff Recommends: Approval of the extension, subject to the previous conditions.

13. PLAN 2009-27F: RESERVE AT WALNUT GROVE, UNIT 1-C (8/1/10)* - located at 3820 Hatfield Lane (a portion of).
(Council District 12) **(EA Partners)**

Note: The Planning Commission originally approved this plan on June 11, 2009, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Addition of utility and streetlight easements, as required by the utility companies and the Urban County Traffic Engineer.
8. Denote: This property shall be developed in accordance with the approved final development plan.
9. Addition of exaction information.
10. Document compliance with minimum open space requirements.

Note: The applicant now requests an extension.

The Staff Recommends: Approval of the extension, subject to the previous conditions.

* - Denotes date by which Commission must either approve or disapprove plan.

14. PLAN 2009-28F: RESERVE AT WALNUT GROVE, UNIT 1-D (8/1/10)* -located at 3820 Hatfield Lane (a portion of).
(Council District 12) **(EA Partners)**

Note: The Planning Commission originally approved this plan on May 14, 2009, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Addition of utility and streetlight easements, as required by the utility companies and the Urban County Traffic Engineer.
8. Denote: This property shall be developed in accordance with the approved final development plan.
9. Addition of exaction information.
10. Document compliance with minimum open space requirements.
11. Resolve access to lots from private streets, and the reduction of open space.

Note: The applicant now requests an extension.

The Staff Recommends: Approval of the extension, subject to the previous conditions.

15. PLAN 2008-161F: JOHNSON PLAZA, UNIT 1, LOT 1 (AMD) (8/5/10)* - located at 1306 South Broadway.
(Council District 11) **(Midwest Engineers)**

Note: The purpose of this amendment is to subdivide one lot into two lots.

Note: The Planning Commission originally approved this plan on December 11, 2008, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection areas.
6. Addition of utility and streetlight easements, as required by the utility companies and the Urban County Traffic Engineer.
7. Denote: This property shall be developed in accordance with the approved final development plan.
8. Addition of cross-sections.

Note: The applicant now requests reapproval.

The Staff Recommends: Reapproval, subject to the previous conditions.

16. DP 2010-24: MARSHALL PROPERTY, UNIT 2 (AMD) (7/4/10)* - located at 3000 Leestown Road (a portion of).
(Council District 2) **(EA Partners)**

Note: The purpose of this amendment is to shift units and the associated building envelopes and access ways.

The Subdivision Committee Recommended: Approval, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Approval of street addresses as per e911 staff.
5. Urban Forester's approval of tree protection plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Greenspace Planner's approval of the treatment of greenways and greenspace.
9. Division of Fire's approval of emergency access and fire hydrant locations.
10. Division of Waste Management's approval of refuse collection.
11. Denote construction access.
12. Resolve compliance with minimum open space requirements (10% on each lot).
13. Resolve off-street parking for units 63-73.

* - Denotes date by which Commission must either approve or disapprove plan.

17. DP 2010-25: ST. PAUL'S PARISH (7/24/10)* - located at 423-501 West Short Street; 153-155 and 157-161 Saunier Street. (Council District 2) **(M2D Design Group)**

Note: The purpose of this amendment is to add buildable area.

The Subdivision Committee Recommended: Approval, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Division of Fire's approval of emergency access and fire hydrant locations.
6. Board of Architectural Review approval required prior to certification.
7. Review by the Technical Committee prior to certification.

18. DP 2008-144: JOHNSON PLAZA, UNIT 1, LOTS 1 & 1-A (8/5/10)* - located at 1306 South Broadway. (Council District 11) **(Midwest Engineers)**

Note: The Planning Commission originally approved this plan on December 11, 2008, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Urban Forester's approval of tree preservation plan.
5. Bike and Pedestrian Planner's approval of bike trails and pedestrian facilities.
6. Division of Fire's approval of emergency access and fire hydrant locations.
7. Division of Solid Waste's approval of refuse collection.
8. Addressing Office's approval of street names and addresses.
9. Addition of cross-sections.
10. Revise note #6.
11. Clarify restaurant parking requirements on plan.
12. Provide metes and bounds description for property line between lots 1-B and 1-C.
13. Addition of existing and proposed easements.
14. Resolve the need for storm water detention.

Note: The applicant now requests reapproval.

The Staff Recommends: Reapproval, subject to the previous conditions.

In conclusion, Mr. Sallee said that the items listed on the Consent Agenda could be considered for conditional approval at this time by the Commission, unless there was a request for an item to be removed from consideration for discussion.

Planning Commission Comment – Chairman Penn asked if anyone in the audience or on the Commission wished to discuss any of the items listed on the Consent Agenda. Mr. Owens requested that PLAN 2010-40F be removed from the Consent Agenda for further discussion by the Commission.

Ms. Roche-Phillips asked for a clarification regarding the "conditional approval" from the Subdivision Committee on several of these plans. Mr. Sallee said that a conditional approval is the normal practice of the Subdivision Committee and/or staff, and that the conditions for those plats are noted on the agenda. He noted that it had been several years since the Commission approved a plan without at least one conditions.

Action - A motion was made by Mr. Owens, seconded by Ms. Richardson and carried 10-0 (Brewer absent) to remove PLAN 2010-40F for further consideration by the Commission, and approve the remaining items listed on the Consent Agenda.

- B. DISCUSSION ITEMS** – Following requests for postponement, withdrawal and no discussion items, the remaining items will be considered.

The procedure for consideration of these remaining plans is as follows:

- Staff Report(s)
- Petitioner's Report(s)
- Citizen Comments – (a) in support of the request, and (b) in opposition to the request
- Rebuttal – (a) petitioner's comments, (b) citizen comments, and (c) staff comments
- Commission discusses and/or votes on the plan

1. FINAL SUBDIVISION PLAN

* - Denotes date by which Commission must either approve or disapprove plan.

- a. PLAN 2008-118F: SAND LAKE & ESTES PROPERTY (SECTION 2) (6/29/10)* - located at 3200 & 3294 Richmond Road. (Council District 7) **(EA Partners)**

Note: The Planning Commission postponed this plan at its April 8, 2010, meeting. The Planning Commission originally approved this plan on September 11, 2008, subject to the following conditions, provided the plan was found to be in compliance with the Richmond Road Traffic and Safety Ordinance (which later occurred):

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers (including grease trap information).
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Addressing Office's approval of street names and addresses.
5. Addition of utility and streetlight easements, as required by the utility companies and the Urban County Traffic Engineer.
6. Denote: This property shall be developed in accordance with the approved final development plan.
7. Correct conditional zoning restrictions.
8. Correct 20' building line along Man O' War Boulevard and adjacent to private access easement.
9. Correct cul-de-sac right-of-way detail unless Planning Commission grants a waiver to Article 6-8 of the Land Subdivision Regulations.
10. Label "pedestrian" access easement from Lake Wales Drive.
11. Include a notation of a public passageway easement adjacent to the right-of-way, detailing the primacy of the LFUCG over utility easements in this area.
12. Addition of drainage easement per note number 14 on the approved development plan.
13. Denote access allowed for fill per note number 14 on the approved development plan.
14. Addition of Private Access Easement note per the Land Subdivision Regulations.
15. Provided the Planning Commission grants a waiver to Article 4-7(d)(1) of the Land Subdivision Regulations.
16. Resolve note number 10.
17. Resolve timing of pavement removal adjacent to Beale Street and Richmond Road.
18. Resolve Richmond Road Landscaping Ordinance planting areas.
19. Addition of the following four notes to the plan.
 - a. Developer shall provide a drainage easement from the retaining wall to the 3270 and 3292 Richmond Road properties. Access to the wall shall also be provided to permit the placement of fill material on 3270 and 3292 Richmond Road, to the acceptance of the Division of Engineering.
 - b. Developer shall provide a vehicular and pedestrian easement, if necessary, for the property at 3292 Richmond Road to have access to the portion of Sand Lake Drive (aka Beale Street), which adjoins the eastern boundary of 3292 Richmond Road.
 - c. The properties located at 3292 and 3270 Richmond Road are hereby granted easements over the private access easement shown herein for vehicular and pedestrian access; and for access to utilities; sanitary sewer and storm sewers, which easements shall run with the land for the benefit of the properties located at 3292 and 3270 Richmond Road.
 - d. There shall be no Certificate of Occupancy for any lot on the plat until Sand Lake Drive is completed to Richmond Road, except for the final surface course, sidewalks, and miscellaneous punch list items which are bondable pursuant to Section 4-7 of the Subdivision Regulations.

The Planning Commission approved the requested waiver(s) to Article 4-7(d)(1) of the Land Subdivision Regulations, for the following reasons:

1. Granting the waiver would avoid a severe hardship, and proceeding with the development of Beale Street (aka Sand Lake Drive) cannot be completed as required until the utilities are relocated in that area. The pavement in place is strictly temporary for construction purposes. This approval is subject to compliance with the Richmond Road Traffic and Safety Ordinance.

Note: Section 1 of the plat was recorded on November 17, 2008 and granted an extension on September 10, 2009, subject to the same conditions. The applicant is now requesting a waiver of Article 6-8(n) of the Land Subdivision Regulations, subject to the previous requirements.

Staff Presentation – Mr. Martin directed the Commission's attention to the final record plat for the Sand Lake and Estes Property, Section 2, which is located at 3200 & 3294 Richmond Road. He briefly oriented the Commission to the surrounding street system, noting that the subject property is at the corner of Man O' War Boulevard and Richmond Road and is bounded by South Eagle Creek Drive. He noted that Lake Wales Drive connects to the rear of the subject property ending in a cul-de-sac.

Mr. Martin said that the Planning Commission originally approved this request on September 11, 2008, subject to the conditions listed on the agenda. He noted that at that meeting, the Planning Commission had granted a waiver to Article 4-7(d)(1) of the Land Subdivision Regulations for the portion of Sand Lake Drive (aka Beale Street), immediately adjacent to Richmond Road. He said that that waiver was for the timing of the completion of the

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construction improvements to Sand Lake Drive. Those construction improvements included the cross-section, the retaining wall and the relocation of the utility lines. He noted that when the applicant had submitted the original request, there was an issue with the timing of the relocation of major utility lines; and at that time, the applicant had no control over when those utility lines would be relocated. Therefore, the Planning Commission granted a waiver to Article 4-7(d)(1) of the Land Subdivision Regulations.

Mr. Martin stated that, at this time, the applicant is requesting a waiver to Article 6-8(n) of the Land Subdivision Regulations. This latest waiver request is in reference to the Lake Wales Drive connection to the rear of the subject property ending in a cul-de-sac. He said that this cul-de-sac was the subject of the original waiver request, and since that time there have been 3 additional waivers granted by the Planning Commission. Mr. Martin directed the Commission's attention to the staff's exhibit, and noted that the following information is a timeline of those waivers:

1. July 12, 2007, PLAN 2005-64P: Sand Lake (AMD) – a waiver was granted to Article 6-8(n) for the Lake Wales Drive cul-de-sac.
2. February 28, 2008, DP 2007-134: Sand Lake & Estes Property (AMD) - a waiver was granted to Article 6-8(a) for the Sand Lake Drive (aka Beale Street) cross-section.
3. February 28, 2008, DP 2007-134: Sand Lake & Estes Property (AMD) - a waiver was granted to Article 6-8(b) for the termination of Sand Lake Drive (aka Beale Street).
4. September 11, 2008, PLAN 2008-118F: Sand Lake & Estes Property - a waiver was granted to Article 4-7(d)(1) for the completion of Sand Lake Drive (aka Beale Street).

Mr. Martin directed the Commission's attention to the Staff Reports for two requested waivers (that were previously handed out), dated March 31, 2010 and the May 5, 2010. He said that at the April 8, 2010, meeting, the Planning Commission had granted the applicant a postponement of the Final Record Plat to today's meeting. At that time, they did not withdraw their original waiver request. He then said that with the applicant's original submission (March 31, 2010), they had indicated that they did not want to build the ADA compliant pedestrian connection between Lake Wales Drive and the subject property, nor do they want to construct the sidewalk surrounding the cul-de-sac. He noted that when this plan was first approved by the Commission, one of the conditions listed on the waiver request was to provide an alternative pedestrian access that would be ADA compliant. Subsequently, the development of the lot has resulted in more grading than expected. In looking at the site, there is a large retaining wall next to Lake Wales Drive that is approximately 16 feet in height. He said that with the significant grade change on the property providing an ADA pedestrian access would be difficult and causes a disproportional impact to the site. He then said that for the applicant to meet the ADA requirement, an alternative route must be provided. He noted that there are sidewalks within the general vicinity and the staff believes that the existing sidewalks do meet the ADA requirements for pedestrian access.

Mr. Martin said that the staff is recommending approval of the requested waiver dated March 31, 2010, for the following reasons:

1. Construction of an ADA compliant ramp would constitute a hardship for the applicant due to the extreme grade change from Lake Wales Drive to the subject property (Lot 2), necessitating a large and lengthy ramp with a disproportionate impact on the design and function of that commercial area.
2. The granting of the waiver will not negatively impact public health and safety. There is an alternate sidewalk system available to the subject property that is ADA compliant; and the applicant will construct an access easement with steps to provide pedestrian access from Lake Wales Drive to the development, consistent with the original waiver approved by the Commission and the intent of the Land Subdivision Regulations.

This recommendation is made subject to the following additional requirement:

1. That the applicant amend the approved final development plan to include the construction of the sidewalk, with the appropriate easement and steps for lot 2 of the proposed development.

Mr. Martin said that the applicant does need to provide some type of pedestrian access from Lake Wales Drive to the subject site, but it does not need to be ADA compliant.

Mr. Martin then directed the Commission's attention to the waiver request dated May 5, 2010, and said that this is a request to waive the requirements of Article 6-8(n) of the Land Subdivision Regulations. He said that the applicant has requested to not provide any type of pedestrian access between Lake Wales Drive and the subject property. The staff understands that there are grade separation and elevation issues, and they are aware of the retaining wall that was constructed along the property line. However, providing stairs at the rear of the site would be appropriate. As far as the concerns with safety in the rear of the property, there are design options that could be utilized to address that issue. This can be done by providing lighting to the area, which would also enhance pedestrian safety and comfort. That being said, Mr. Martin stated that the staff does not agree with the applicant's justification in not providing a pedestrian access, and recommends disapproval of the requested waiver dated May 5, 2010, for the following reasons:

1. Construction of pedestrian access will not constitute a hardship for the applicant because the utilization of steps is an appropriate method to address the extreme grade change from Lake Wales Drive to the subject property, and in

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providing this access is consistent with the intent of the Subdivision Regulations and the Planning Commission's initial approval of the final record plan.

2. The construction of the pedestrian access will not compromise public safety because reasonable locations and design alternatives exist to provide for the safety of pedestrians consistent with the original waiver approved by the Commission and the intent of the Land Subdivision Regulations.

Planning Commission Questions – Mr. Owens asked that at the time of the original approval if there was an understanding that the pedestrian access would be provided. Mr. Martin replied affirmatively, and noted that providing the pedestrian access was a condition of the original approval that was granted by the Commission. He said that when the original request was submitted, the site layout was dominated by mostly commercial uses. There was considerable amount of discussion regarding the connection of Lake Wale Drive into the subject property, which in the end, was not approved; and it had to be terminated into the now constructed cul-de-sac. He then said that due to the grading and elevation issues, the applicant has requested a waiver to Article 6-8(n) of the Land Subdivision Regulations. The Planning Commission granted that request, and as part of the approval, pedestrian access was to be provided.

Ms. Copeland asked if the pedestrian access should have been handicap accessible. Mr. Martin said that in the beginning it was; however, the applicant is now requesting a waiver to Article 6-8(n) of the Land Subdivision Regulations as noted in the March 31, 2010 waiver report. Ms. Copeland clarified that the waiver report dated May 5, 2010, states that no pedestrian access is to be provided. Mr. Martin replied affirmatively.

Representation – Richard Murphy, attorney, was present along with Dennis Anderson, applicant; Mike Craft, Development Manager and Rory Kahly, EA Partners. He submitted an exhibit to the Commission, and said that this site needed significantly more grading done than initially anticipated. He then said that in 2007, there was discussion regarding Lake Wales Drive being terminated as a cul-de-sac; and at that time, Mr. Anderson agreed to build the cul-de-sac, even though the adjacent neighborhood did not feel it was warranted. He said that the staff deemed that the cul-de-sac was appropriate to provide a turnaround for different sized vehicles. He then said that the cul-de-sac has been built and a retaining wall has been constructed.

Mr. Murphy said that they understand that in the past developers have requested waivers to not provide improvements to a site; and should the waiver be granted, there will be no need for Mr. Anderson to provide any improvements. He said that Mr. Anderson is willing to provide a pedestrian connection, but the problem is the extensive grading and elevation of the area. He then said that they had submitted a waiver request for Article 6-8(n) of the Land Subdivision Regulations for the ADA requirements. Due to the 16' retaining wall it is impossible to make a pedestrian connection without the use of steps. He said that with further review of the site, they believe that there is the potential for a public safety concern. He then said that they understand the pedestrian connection is important, but public safety must also be considered. It is important to make sure that the public is safe. He said that they must consider whether or not this connection would be beneficial to the adjacent neighborhood, the potential businesses or even to the people who may use the pedestrian connection.

Mr. Murphy directed the Commission's attention to the rendered development plan, and oriented them to the surrounding street system, as well as the nearby residential and commercial uses. He said that the northwest lot has been sold and is under a long term land lease with the dealership. He pointed out the location of the residential area, the cul-de-sac and retaining wall, noting that the residential area is zoned R-3. He then said that there are plans for a hotel on the property with a pedestrian connection through the cul-de-sac. Mr. Murphy noted that there are two options in providing that connection: 1) a stairway that is attached to the retaining wall, or 2) a stairway running through the landscape buffer area. He said that each of these scenarios presents a safety hazard because the access would be an isolated, confined space that is out of view. He then said that they are concerned with the implications if the access is provided. An alternative pedestrian access would be the existing sidewalk through the adjacent neighborhood. He said that it is just under a mile from the back of the neighborhood to the shopping center. He said that by utilizing the sidewalk, there is more lighting, it is more visible and it is safer for pedestrian traffic. He then said that if the connection is made through the cul-de-sac, the connection will lead to the back of a building, which is unsafe. This property is zoned B-3, and it was not designed to accommodate a neighborhood shopping center. He said that another concern is property being vandalized. He then said that with access being provided between the neighborhood and the rear of the building, there is a higher probability rate of property being vandalized. This is a concern with both the residents and the future businesses of the shopping center. He said that Mr. Anderson has been in constant communication with the residents of Lake Wales Drive, noting that a representative from the neighborhood is present. He said that they want to have the pedestrian connection; but after reviewing the site, and weighing each of the options, the access is not feasible due to the topography of the area and the public safety hazard. He then said that the safety considerations of the 21 houses along Lake Wales Drive should be taken into consideration. He said that there is an alternative route to the shopping center without having to cross a street; it may not be the ideal solution, but it's the best solution.

In conclusion, Mr. Murphy said that Jennifer Dobbs, who is representing the Lake Wales neighborhood and Officer Gregg Jones, with the LFUCG Police Department, were present to voice their concerns with the connection.

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Planning Commission Questions – Mr. Cravens asked if the retaining wall is 16 feet. Mr. Murphy said that the length has not been measured. Mr. Cravens then asked how many steps there would need to be. Mr. Murphy said that it could be 2 stories. Mr. Cravens said that, from his calculations, there could be more than 32 steps at 6 inches increments since this is a commercial use and not a residential use.

Ms. Copeland said that this waiver is based upon hardship, the wall is unusual, and asked why the land was graded that extensively. Mr. Murphy said that in order to prepare the property for development the land had to be flattening and the slope going from Lake Wells Drive to Richmond Road was greater than going from Richmond Road to Lake Wales Drive. Ms. Copeland said that it was the applicant's choice to have a flat lot. Mr. Murphy said that the lot had to be flat to make it available for commercial users. Mr. Anderson said that the Engineering Manual requires holding the slope at a 5 percent grade off Richmond Road and Man O' War Boulevard. He then said that this will determine the height of the rear wall. Ms. Copeland asked if the site could be plateaued at different levels. Mr. Anderson said that even though there is a proposed hotel for that lot, they will not know what will be built at this time; and to have breaks in the slope would be a risk. Ms. Copland said that making the land more flat makes it more marketable. Mr. Craft said that the grading process starts at the Richmond Road and Man O' War Boulevard and ends at the retaining wall. He said that if the land is plateaued, then the retaining wall becomes taller than it is now. The grading for this site was held at 5 percent across the entire development, which resulted in a shorter retaining wall. Ms. Copeland said that the whole development does not have to be flat. Mr. Craft said that the development is not flat; it is at a 5 percent grade. Ms. Copeland said that it could have been undulated with the topography of the land. She said that part of this hardship is self inflicted. Mr. Craft said that when the slope is started at the lowest point (Richmond Road), the maximum slope that is allowed is held at the other end, resulting in the height of the retaining wall. Ms. Copeland said that the steps could plateau down to the site. Mr. Craft said that that is true, but it would increase the length of the stairs. Ms. Copeland said that there was an agreement made to provide pedestrian access. Mr. Murphy said that even without the steps, there is still the safety issue. He then said that if this land were flat, the safety issue would still exist due to the isolated area between the subject site and the neighborhood. The steps are just another issue added to the safety issue for this site.

Mr. Penn said that he had hoped that Sand Lake would be completed before he left the Planning Commission. He said that he has watched Sand Lake evolve in many different ways, and asked if this is the final development plan. Mr. Murphy said that this is the final development plan, and they are hoping that this will be what is built on this site. He said that with the current economy, it has caused issues with the project; and there is no guarantee that this project will not change in the future. Mr. Penn said that he is not so much concerned with the potential businesses, but he is concerned with what had to be done to the lot to be ready to be developed. Mr. Penn said that there has been no mention of the residential area at the top of the retaining wall needing a fence for safety, considering someone could fall 16 feet. Mr. Murphy said that there is a 4-foot black metal fence at the top of the retaining wall to provide safety. He submitted a series of photographs showing different views of the cul-de-sac. Mr. Penn said that his concern is the 16-foot retaining wall being the side yard to someone's property. Mr. Murphy said that the retaining wall does decrease in height, the closer it gets to Man O' War Boulevard.

Audience Comment – Jennifer Dobbs, who resides at 290 Lake Wales Drive, was present. She said that she has been a part of this process since the beginning, and Mr. Anderson has kept her informed of what was happening with this project. She has represented the neighborhood for several years, and they had viewed the stairway connection as being a benefit to their street. However, they do not believe someone would come off Eagle Creek to Lake Wales Drive only to gain access to the shopping center via the stairs. She then said that when this land was wooded, the neighborhood had trouble with trash due to people walking in and out of the woods; however, since the retaining wall has been built, those issues have been resolved.

Ms. Dobbs explained that there have been several cases of someone being chased by the Police; and they will turn onto Lake Wales Drive, not knowing there is not a connection out, resulting in an arrest. She then explained that there is the potential for the future businesses to be burglarized. She further explained that a car could park at the top of those stairs, rob one of the stores and make an easy getaway through the neighborhood.

Ms. Dobbs said that most of the people living on Lake Wales Drive have been there for 26 years, and many of the residents will not use the stairs. She then said that, from the beginning, the residents of this area have stated that they do not want the stairs. There is a security and safety risk of having the stairs leading down behind a hotel, and it makes it more likely for crime to happen. She said that they do not want the steps to be installed, and if they were, it would become a useless endeavor.

Police Department Comments – Officer Gregg Jones stated that he is responsible for an initiative called "Secure by Design." He said that they were contacted to perform a site assessment of the property and immediately noticed the retaining wall. He then said that Lake Wales Drive is a quiet street with about 20 houses. He noted that when there is a foot path leading from a cul-de-sac, it is called a "leaky" cul-de-sac, which means that the cul-de-sac is a pedestrian connection to other areas. He said that research shows that a leaky cul-de-sac increases the likelihood of criminal activities. In reviewing the site plan, the cul-de-sac leading down to a large parking lot at the back of a building is a real safety concern. He noted that foot traffic does lead to property crimes, mischief, as well as vandalism of vehicles for both property owners and business owners. He said that there would be little surveillance in

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the back of these buildings; and the rear area would not be protected with "eyes on the street," meaning no one would see what is going on.

Officer Jones said that his recommendation is not to have pedestrian access from the cul-de-sac.

Planning Commission Questions – Mr. Owens asked what type recommendations could be offered for safety if the steps were already installed. Officer Jones said that a cul-de-sac is leaky no matter if it is flat or if it has steps. He said that the fact that a person can exit a neighborhood into a parking lot has been shown to not be safe. Mr. Owens asked, hypothetically, what safety recommendations would be considered for existing stairs. Officer Jones suggested that closed circuit surveillance should be used, as well as having the rear buildings and stairs made visible with lights.

Ms. Richardson asked who is responsible should an accident occur on the steps. Mr. Murphy said that the steps will be on the developer's property, and there is a concern with what could happen. He said that they can not advocate the steps due to the safety concerns, which is why they are requesting not to build that connection. He then said that this is not a question of whether or not Mr. Anderson wants to build the stairs; it's a question of whether or not the stairs should be built.

Mr. Paulsen noted that Officer Jones and he have worked together with regard to leaky cul-de-sacs and the safety issues that occur. He said that with no prior knowledge of this development, he would suggest not to make the connection due to the safety concern. He then said that the issue of victimization is a two-way street. The rate of residential burglary will be increased, as well as the rate of larceny and vandalism to the hotel lot. He said that for an area with a leaky cul-de-sac, the suggestion is to break that connection. As for this development, if the steps existed and crime became an issue, the suggestion would be to close that access, which is what they want to avoid in the first place. He said that, at the planning stage and before the problem begins, they review whether or not the connection should be made, as well as whether this connection could pose a safety problem; if so, that connection needs to be broken. He then said that that issue coupled with the neighborhoods' desire not to have the connection, would lead him to recommend that the access be terminated. A leaky cul-de-sac is not recommended because it does increase the rate of crime.

Mr. Wilson asked why the Planning Commission would approve anything that is not ADA compliant. Mr. Sallee commented that this is a rare type of waiver request, and last one was being 10 years ago. Mr. Martin added that should there be an alternate route that is compliant with ADA requirements, then that route is acceptable. Mr. Wilson confirmed that for this development the alternate route would be through the neighborhood, and asked how far the cul-de-sac is from to the development. Mr. Martin replied that the distance is about a quarter mile between those two points. He said that to be ADA compliant, an alternate route must be provided. The route does not have to be a direct route, just an alternate route. He said that with the difficulty of the topography, the issue is building an ADA compliant ramp; and since there is an alternative route, the staff did agree that this would create a hardship. Mr. Wilson confirmed that the alternate route has sidewalks, to which Mr. Martin replied affirmatively.

Action - A motion was made by Mr. Cravens to approve the requested waiver dated March 31, 2010, but approval of the requested waiver dated May 5, 2010, based on the following finding:

1. Pedestrian access would be detrimental to the public safety because it would have to be created within confine and isolated areas, either as a stairway attached to the retaining wall or as a walkway through the 20' landscape buffer. Both alternatives would be out of the public view, thereby raising serious safety implications. The need for the waiver was created by the unforeseen grading required to develop this and the surrounding properties. The neighborhood is opposed and there is an alternative route.

Ms. Boland recommended being clear with regard to March 31, 2010, waiver request that the Commission adopts the finding proposed by the staff. Mr. Cravens replied affirmatively.

The motion was seconded by Ms. Whitman and failed 5-5 (Copeland, Holmes, Owens, Roche-Phillips, and Wilson opposed; Brewer was absent).

Mr. Penn asked for guidance from the Law Department. Ms. Boland said that since the motion failed and there are two waiver requests, the Commission could take action on each waiver separately.

Action - A motion was made by Mr. Holmes, seconded by Ms. Roche-Phillips and carried 10-0 (Brewer absent) to approve the requested waiver dated March 31, 2010, for reasons provided by staff.

Action - A motion was made by Ms. Roche-Phillips, seconded by Mr. Wilson and failed 5-5 (Richardson, Paulsen, Cravens, Whitman and Wilson opposed; Brewer absent) to accept the staff's recommendation of disapproval of the requested waiver dated May 5, 2010.

Ms. Boland said that based on the motions, the applicant was granted a waiver from ADA compliant access, but was not granted a waiver to supply some type of pedestrian access.

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Audience Comment – Ms. Dobbs asked how the Commission could vote the way they did after hearing the testimony of a Lexington Police Officer.

- b. PLAN 2010-40F: SHARKEY PROPERTY, UNIT 1 (A PORTION OF) (AMD) (7/4/10)* - located at 1700 Leestown Road (a portion of). (Council District 2) **(EA Partners)**

Note: The purpose of this amendment is to revise the street cross-sections.

The Subdivision Committee Recommended: Approval, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
5. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
6. Correct cross-section "G-G" (delete "varies").
7. Addition of conditional zoning restrictions.
8. Correct parent plat notation.
9. Add additional cross-sections to reflect as-built conditions.
10. Revise cross-section "E-E" to reflect minimum sidewalk width.

Staff Presentation – Mr. Taylor directed the Commission's attention to the amended final record plat for the Sharkey Property, Unit 1 (AMD), which is located at 1700 Leestown Road. He oriented the Commission to the surrounding area, and noted that the subject property is located near the corner of Leestown Road and New Circle Road. There is an access easement that runs from Towne Center Drive into the center of the Sharkey Property commercial area. He said that, for this particular plat, the rights-of-way now before the Commission includes Sharkey Way, Louie Place and Hatter Lane.

Mr. Taylor said that the purpose of this amendment is to revise the street cross-sections for Sharkey Way, Louie Place and Hatter Lane. He noted that the cross-section for these rights-of-way is marked as "G-G" (referred to in condition number 6) on the plat. He then said that the applicant will also need to revise the access easement in the center of the property, which is marked as the "E-E" section (referred to in condition number 10) on the plat. The access easement serves the retail uses along Towne Center Drive.

Mr. Taylor said that it was staff's understanding that the purpose of this amendment was to amend the cross-sections in order that the surety bond can be released from the Division of Engineering. He noted that the applicant will need to clarify the width of the utility strips and the location of the sidewalks for cross-section "G-G." In addition, Mr. Taylor said that this plat will need to clarify the location of the planters, trees and parking that will be used within cross-section "E-E" along the commercial access easement. The commercial development along Towne Center Drive has existing tree planters and on-street parking. He noted that the cross-section within the access easement indicates that the sidewalk will vary from 8 to 12 feet in width. He then said that the purpose of this amendment was to also clarify what will be in the access easement, as well as reflect the "as-built" conditions for the sidewalks and utility strips for the sections of Sharkey Way, Louie Place and Hatters Lane.

In conclusion, Mr. Taylor said that the Subdivision Committee recommended approval, subject to the conditions listed on the agenda.

Planning Commission Question – Mr. Owens asked if the applicant is requesting that the bonds be released. Mr. Taylor replied affirmatively. Mr. Owens asked if the work on the subject site has been completed. Mr. Taylor replied that the staff could not answer that question. Mr. Owens asked why there is a request to do so if the work has not been completed, and why the bonds should be released at this point. Mr. Taylor deferred the question to Mr. Newman in the Division of Engineering.

Mr. Owens asked for clarification of condition number 9. Mr. Taylor said that there are certain areas of the utility strip in the right-of-way that show a difference of 6 inches in width. He said that condition #9 will require the width of the utility strip be shown in those areas that are built. Mr. Owens asked that the utility strip range from 5 to 5½ feet in width, and asked what the actual measurement should be. Mr. Taylor noted that the utility strip is 5 feet in width. He said that the 6-inch difference is its location from the face of curb instead of from the back of curb. Mr. Owens commented that the sidewalk was built incorrectly and asked if now the Commission is being asked to correct it. Mr. Taylor replied affirmatively, and said that the staff is requesting that those sections of the sidewalk that do not have the width listed be added to the plat.

Mr. Newman said that there was some variation of the sidewalk location relative to how it is shown on the final record plat. He then said that the final record plat shows a 5½' utility strip, and for whatever reason, as the construction commenced, the sidewalk was incorrectly built. He noted that the applicant could remove and replace

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the existing sidewalk or request an administrative action changing the final record plat. He said that typically this type of request is not uncommon and could usually be done through a minor amendment.

Mr. Owens asked, in reference to the release of bonds, whether or not the work has been completed. Mr. Newman replied that not all of the work is completed. He said that this is an issue of reducing the bond amount when it is renewed annually, which would then credit the developer for the work that's completed.

Representation – Rory Kahly, EA Partners, was present representing the applicant. He said that they are in agreement with the recommendations listed by the staff.

Mr. Kahly said that there was always a discussion concerning the sidewalk; and to help make this process easier, the word "varies" was added to the plat when it was submitted. He said that the sidewalk is 5 feet in width, and the right-of-way is 60 feet, and everything is built to standard. The only difference is how the sidewalk was "pulled" whether it was measured from the "front of curb" or "back of curb." He noted that within this measurement the aprons and parking area must also be tied into the sidewalk elevation.

Mr. Kahly noted that the gas station at the front of the Townley development had changes made to the entrance street layout due to the utility placement. He said that this change allowed the sidewalk to be moved to continue the sidewalk around to Sharkey Way. The same setbacks were maintained even though the recorded sections showed the sidewalk being 6" different. He said that the recorded cross-section has an extra foot on either side to include the wider sidewalk. The sidewalks are still 5 feet, and the sidewalks are either in the right-of-way or within the right-of-way, plus easement. He said that the utility strip is what has been built differently.

In response to a earlier question from Mr. Owens, Mr. Kahly said that the entire sidewalk has not been built and it will not be completed until the construction is done. He said that prior to any building being constructed, the developer had to bond the sidewalk. If the sidewalks were not bonded and built, the construction of the building would end up destroying those sidewalks. He said that over time the bond amount can be reduced by what has been completed.

Mr. Kahly stated that another issue is the access easement portion of Towne Center Drive. He said that this access easement is private and there is 10-foot span that will include street trees and wells, as well as entry columns to the features, creating a Towne Center Plaza. He said that since these items were not shown in the cross-section, the bond cannot be reduced.

Mr. Kahly said that everything is built correctly; and to have the bond released or decreased, the approval by the Commission is needed.

Planning Commission Question – Ms. Copeland said that it is one thing to have street trees and tree wells along with columns, and asked how many columns will be impacting the pedestrian area. Mr. Kahly said that there is a clear sidewalk to provide a passage area. He then said that the columns will be the focal entrance into a building. Ms. Copeland asked if the columns are part of the building. Mr. Kahly replied yes, but it is not public right-of-way. These items are located within the easement area and it is part of the improvements. He said that it is noted in the condition that the minimum sidewalk width be shown. Ms. Copeland asked how the sidewalk conflict could be prevented in the future, to which Mr. Kahly responded that he did not know of a way to accomplish that.

Audience Comment – Mr. Penn asked if anyone in the audience wished to discuss this request. There was no response.

Mr. Cravens commented that it is very admirable of the developer to clean up this area.

Action - A motion was made by Mr. Cravens, to approve PLAN 2010-40F, subject to the conditions listed on the agenda.

Discussion of Motion – Mr. Owens noted that this is a good development; however, the builders are responsible for making sure things are done the proper way.

The motion was seconded by Ms. Whitman, and carried 10-0 (Brewer absent).

- c. PLAN 2010-41F: MARSHALL PROPERTY, UNIT 2-K (AMD) (7/4/10)* - located at 3000 Leestown Road (a portion of). (Council District 2) **(EA Partners)**

Note: The purpose of this amendment is to subdivide three lots into 41 lots.

The Subdivision Committee Recommended: Approval, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.

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4. Approval of street addresses as per e911 staff.
5. Urban Forester's approval of tree protection area(s).
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Greenspace Planner's approval of the treatment of greenways and greenspace.
8. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
9. Provided the Planning Commission grants a waiver of Article 4-8 of the Land Subdivision Regulations.
10. Addition of pedestrian access easement.

Staff Presentation – Ms. Gallt directed the Commission's attention to a rendering of the Amended Final Record Plat for the Marshall Property, Unit 2-K (AMD), located at 3000 Leestown Road. She said that the purpose of this amendment is to subdivide three lots into 41 lots. She then said that the Subdivision Committee reviewed the applicant's request and recommended approval of this plat, subject to the conditions listed on the agenda. She noted that the applicant has also requested a waiver to Article 4-8 of the Land Subdivision Regulations, and that Mr. Martin would present that report.

Waiver Presentation - Mr. Martin presented the Staff Report, and stated that the applicant is requesting a waiver to Article 4-8 of the Land Subdivision Regulations. This waiver would allow the completion of the access easements for the townhouse units to be more closely coordinated with the development of these lots. He noted that the original layout of the townhouse development showed the access easements providing the frontage for the townhouse units. He said that there is a condition associated with the development plan, which insures that the access easements are completed prior to the construction of the townhomes. However, as the development proceeded, the applicant discovered that there is a problem with installing the utilities and constructing the drive aisles to these units. He noted that the construction on these lots would disturb the access easement; therefore, the applicant is requesting to bond the entire utility access easement in order to complete the townhouses first. However, he said that bonding only the asphalt course of the access easement will insure their timely completion and still allow the construction of the townhouses to proceed.

Mr. Martin said that the Staff is recommending approval of the requested waiver to allow recordation of the plat prior to completion of any asphalt courses, for the reasons listed on the Staff Report.

Representation – Rory Kahly, EA Partners, was present representing the applicant. He requested that the waiver include the entire road bed of the access easement. He said that stone is used in the construction of the roadway, and it needs to be protected just as the asphalt portion does. Exposure of the stone bed will be detrimental to the development and will cause an increased financial hardship. He said that they are requesting approval for the entire roadway to be bonded until after the construction of the development is completed.

Audience Comment – Mr. Penn asked if anyone in the audience wished to discuss this request. There was no response.

Note: *The Commission proceeded to discuss the next agenda item, prior to the following motion.*

Action - A motion was made by Ms. Roche-Phillips, seconded by Ms. Whitman, and carried 10-0 (Brewer absent) to approve the waiver request, according to the recommendations provided by the staff.

- d. PLAN 2005-196F: SHARKEY PROPERTY, UNIT 2-B (7/4/10)* - located at 1700 Leestown Road (a portion of).
(Council District 2) **(EA Partners)**

Note: The Planning Commission originally approved this plan on August 11, 2005, and reapproved this plan at the August 10, 2006; November 8, 2007; and January 15, 2009 meetings, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
3. Building Inspection's approval of landscaping.
4. Urban Forester's approval of tree inventory map/tree preservation plan.
5. Approval of street addresses by e911 staff.
6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
7. Provided that all appropriate rights-of-way are dedicated, either through the recordation of Unit 2-A, or by adding the streets to this plat.

Note: The Planning Commission deleted condition number 7 from the recommendation at their January 15, 2009, meeting. The applicant is now requesting reapproval and a continued discussion of this plan to add five single family lots and reduce the number of townhomes by one.

* - Denotes date by which Commission must either approve or disapprove plan.

The Subdivision Committee Recommended: Postponement. There are questions regarding compliance with Article 6-4(c) and Article 6-4(g) of the Land Subdivision Regulations. In addition, the access easement proposed to provide the only access to Lots 52-60 has not yet been constructed. The applicant has also requested a waiver to Article 4-8 of the Land Subdivision Regulations.

Should this plan be approved, the following amended requirements should be considered:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
3. Building Inspection's approval of landscaping.
4. ~~Urban Forester's approval of tree inventory map/tree preservation plan.~~
5. Approval of street addresses by e911 staff.
6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
7. Denote: No building permit shall be issued for lots 50 and 54 until an easement minor plat is certified.
8. Discuss the proposed driveway access to the single family homes.
9. Discuss the proposed access and parking easement.
10. Discuss the proposed waiver.

Staff Presentation – Mr. Martin directed the Commission's attention to Sharkey Property, Unit 2-B, located at 1700 Leestown Road. He said that the Planning Commission had previously approved this subdivision plat on August 11, 2005, subject to the conditions listed on the agenda. He then said that the applicant is now requesting a reapproval and a continued discussion of this plan to add five single family lots and reduce the number of townhomes by one.

Mr. Martin oriented the Commission to the layout of the surrounding area, and noted that the subject property is located near the corner of Leestown Road and New Circle Road. He pointed out the location of Towne Square Park and the development's detention basin, as well as the existing residential uses in the nearby Townley development. He said that on the original submittal there were townhouses being proposed along Old Towne Walk. These townhouses served as a transition from the single family area to the east, to the apartment complex to the west. Mr. Martin noted that the new development plan for this area will be considered by the Commission later in the meeting, and it will identify the proposed development for this area. He then said that there is an access easement between the townhouses and the single family lots, as well as a parking area to the rear of the townhouses adjacent to the apartment complex.

Mr. Martin noted that the Subdivision Committee had recommended postponement of this item. He said that the staff had met with the applicant to discuss several issues with this proposal, and one of the issues was the conflict with the sanitary sewer system. In reviewing this plan, the applicant will need to submit an easement minor plat to remove that conflict. The staff is recommending that no building permits will be issued for lots 50 and 54 until the applicant has a certified Easement Minor Amended Plat. He then said that by restricting the building permits for this request, it will allow the plat to move forward.

Mr. Martin said that there was a discussion concerning the driveway access proposed to the single family lots. He then said that the staff believes there should not be street any access to the single family homes. The access easement should provide a rear access to these lots, which is consistent with the overall Townley development. As for the access and parking easement to the rear of the townhouses adjacent to the apartment complex, Mr. Martin noted that the staff was concerned with whether or not the R-3 requirements could be met.

Mr. Martin said that the applicant had requested a waiver to Article 4-8 of the Land Subdivision Regulations concerning the completion of the public improvements. This was due to a concern with the timing of the access improvements and whether or not it could be built in conjunction with the construction of the townhouses. Since the Subdivision Committee meeting, the staff and the applicant decided that the waiver is not needed at this time. He said that the access improvements and the development of these lots can be done simultaneously. With that being said, the staff is recommending postponement of the waiver request, subject to the reason listed on the report; otherwise, the applicant could request that the waiver be withdrawn from the Commission's consideration.

In conclusion, Mr. Martin said that the staff is recommending reapproval, subject to the following changes to the recommended conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
3. Building Inspection's approval of landscaping.
4. ~~Urban Forester's approval of tree inventory map/tree preservation plan.~~
4. 5. Approval of street addresses by e911 staff.
5. 6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
6. 7. Denote: No building permit shall be issued for lots 50 and 54 until an easement minor plat is certified.
8. Discuss the proposed driveway access to the single family homes.
9. Discuss the proposed access and parking easement.

* - Denotes date by which Commission must either approve or disapprove plan.

10. Discuss the proposed waiver.

Representation – Rory Kahly, EA Partners, was present representing the applicant. He said that they are in agreement with the staff's revised recommendations, and requested reapproval.

Planning Commission Questions – Ms. Copeland asked for an explanation as to what will happen on garbage pick up day. Dennis Anderson, developer, replied that this revised plat has come before the Commission at the request of the homeowners' association. He then said that in the beginning, the layout of the townhomes was positioned with the sides facing the single family area. The homeowners' association asked that the layout be reconfigured with the townhomes facing the access easement. As far as the garbage pick-up, this development offers maintenance free lifestyle, which means the tenant will pay a homeowners' association fee and, in return, all their outside maintenance needs are taken care of. This type of service includes herbie service to and from the street on pick-up days.

Ms. Copeland asked for further explanation as to what type of container will be used -bags or herbies. Mr. Anderson said that an employee will take 13 Herbies to and from the street on pickup day. Ms. Copeland clarified that there will be 13 Herbies, 13 Rosies and 13 Lennies, and asked if there will be enough space to accommodate this many containers. Mr. Anderson replied affirmatively, and noted that there is 120' of street frontage available. Ms. Copeland said that this may not be enough space to accommodate that many Herbies, which will make it a messy alternative for a high density area. Mr. Anderson said that the only lots that will have herby service are the single family houses. The townhouses will utilize the apartment complex compactor. Ms. Copeland confirmed that the townhouse tenants will walk over to the apartment complex to drop off their trash. Mr. Anderson said that the townhome residents will be able to utilize the apartment complex amenities, such as the compactor.

Ms. Copeland asked if the homeowners' association fee will take care of the townhome maintenance. Mr. Anderson replied that the townhouse units are under a different homeowners' association. Ms. Copeland said that the tenants of the townhouses will have to walk out their front door, go through the small parking lot and walk over to the apartment complex. Mr. Anderson verified this affirmatively. Ms. Copeland commented that this will eliminate several Herbies in this area, but this development is still "messy." She said that if high density areas are to "sell" the community needs a better solution to be determined.

Mr. Penn asked if a motion to postpone the waiver is required. Ms. Boland replied affirmatively, and said that either the applicant needs to withdraw the waiver request or the Planning Commission should indefinitely postpone it.

Mr. Kahly asked if it would acceptable to agree with the deletion of condition number 10 or if the waiver should be withdrawn first. Ms. Boland said that the waiver will need to be withdrawn by the applicant and accepted by the Commission, or the Commission could indefinitely postpone the waiver request in accordance with the recommendations of the staff.

Mr. Kahly stated that they would like to withdraw the waiver request for PLAN 2005-196F. He then said that they are in agreement with the staff's revised recommendations, and requested reapproval.

Audience Comment – Mr. Penn asked if anyone in the audience wished to discuss this request. There was no response.

Mr. Penn clarified that there would be two motions: first, accept to withdrawal of the waiver request and then to reapprove the applicant's request.

Action - A motion was made by Mr. Owens, seconded by Ms. Whitman, and carried 10-0 (Brewer absent) to accept the withdrawal of the waiver request for PLAN 2005-196F.

Action - A motion was made by Mr. Owens, seconded by Ms. Whitman, and carried 10-0 (Brewer absent) to reapprove PLAN 2005-196F, subject to the revised recommendations provided by the staff.

Note: At this time, the Commission reconsidered their action on the previous subdivision plat.

Planning Commission Comments – Ms. Roche-Phillips clarified that during the previous motion for PLAN 2010-41F, a motion to approve the final record plat was not acted upon.

Action - A motion was made by Ms. Roche-Phillips, seconded by Mr. Owens, and carried 10-0 (Brewer absent) to approve PLAN 2010-41F, subject to the conditions provided by the staff.

3. DEVELOPMENT PLANS

- a. DP 2010-22: TACKETT PROPERTY (KROGER PLAZA) (AMD #11) (7/4/10)* - located at 1650 Bryan Station Road and New Circle Road. (Council District 6) **(The Roberts Group)**

* - Denotes date by which Commission must either approve or disapprove plan.

Note: The purpose of this amendment is to add 15,269 square feet and a drive-through window, and to revise the off-street parking requirements.

The Subdivision Committee Recommended: Approval, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Approval of street addresses as per e911 staff.
5. Urban Forester's approval of tree protection plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire's approval of emergency access and fire hydrant locations.
8. Division of Waste Management's approval of refuse collection.
9. Department of Environmental Quality's approval of environmentally sensitive areas (steep slopes)
10. Correct notes #34 and #35.
11. Addition of name and address of developer.
12. Denote Final Record Plan designation for the property.
13. Denote construction access location(s).
14. Denote parking aisle and space dimensions.
15. Denote height of buildings on plan.
16. Add existing easements per Final Record Plat.
17. Addition of metes and bounds from Final Record Plat.
18. Clarify parking requirements (no 15% reduction allowed per the B-6P zone).
19. Clarify "existing" versus "proposed" retail at north end of shopping center.
20. Discuss compliance with Big-Box Design Guidelines.

Staff Presentation – Mr. Martin directed the Commission's attention to the rendering of the Amended Final Development Plan for the Tackett Property (Kroger Plaza) (AMD # 11). This property is located at 1650 Bryan Station Road. He oriented the Commission to the surrounding area, and said that the subject site is located at the northeast corner of Bryan Station Road and New Circle Road. He noted that the Rookwood Subdivision is to the northeast of the subject site. He said that there are commercial developments along New Circle Road, in this area, which include White Castle and Long John Silvers. He then said that there are various retail stores within the shopping center itself.

Mr. Martin said that the purpose of this amendment is to add 15,269 square feet to the existing Kroger store, as well as to provide a new drive-through window for the pharmacy. He then said that there is access into the site from both New Circle Road and Bryan Station Road. He noted that with this development increasing in size, it must now be reviewed under the Big-Box Design Guidelines. He noted that to the northeast of the store there is an existing detention basin, and this is where the proposed expansion will be located.

Mr. Martin said that since the Subdivision Committee meeting, the applicant has provided the staff with a revised submission that addresses the following concerns made at the Technical Committee meeting:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Approval of street addresses as per e911 staff.
5. Urban Forester's approval of tree protection plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire's approval of emergency access and fire hydrant locations.
8. Division of Waste Management's approval of refuse collection.
9. Department of Environmental Quality's approval of environmentally sensitive areas (steep slopes)
10. ~~Correct notes #34 and #35.~~ Resolve the easement conflicts with the proposed addition prior to plan certification.
11. ~~Addition of name and address of developer.~~ Relocate internal sidewalk from Phase III to the approval of the Bike & Pedestrian Planner.
12. ~~Denote Final Record Plan designation for the property.~~ Complete sidewalk connection to Bryan Station Road.
13. ~~Denote construction access location(s).~~
14. ~~Denote parking aisle and space dimensions.~~
15. ~~Denote height of buildings on plan.~~
16. ~~Add existing easements per Final Record Plat.~~
17. ~~Addition of metes and bounds from Final Record Plat.~~
18. ~~Clarify parking requirements (no 15% reduction allowed per the B-6P zone).~~
19. ~~Clarify "existing" versus "proposed" retail at north end of shopping center.~~
20. ~~Discuss compliance with Big-Box Design Guidelines.~~

Mr. Martin also presented the Staff Report on the Big-Box Guidelines, and he said that one of the issues related to the Big-Box Design Guidelines is to resolve the conflict easement between the proposed addition and the existing retail area. He noted that the applicant is aware of this conflict and they are working to resolve this issue prior to certification of the plan. He then said that the Bike and Pedestrian Planner has approved the proposed pedestrian

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access coming off of New Circle Road, and the staff is recommending that an additional sidewalk come from Bryan Station Road leading to the Fifth/Third Bank.

Mr. Martin stated that the applicant has submitted the building elevations to demonstrate the compliance with the Big-Box Design Guidelines, which were on display. He said that with the exception of the rear of the property, the applicant has proposed significant change to the existing building. In reviewing the development plan, there are several notes listed that came about through the original B-6P zone change, and as part of that zone change there were private agreements and conditional zoning restrictions attached to this site. He said that as part of the adopted conditional zoning restrictions, an 8-foot block wall, a 5-foot buffer strip and a 50-foot buffer area is required to be located to the rear of the buildings.

Mr. Martin then stated that as part of the Big-Box Design Guidelines, the height of the building should be varied and the aspects of the front façade should be broken up and clearly delineated. He said that this can be done by using store displays and landscaping material. He said that the two proposed customer entrances into the building must also be clearly delineated.

Mr. Martin said that another aspect of the Big-Box Design Guidelines is to promote sidewalks along the perimeter of the property. The applicant is proposing to complete the sidewalk connection from the intersection of Bryan Station Road and New Circle Road over to White Castle. He said that the staff has requested an additional sidewalk connection from Bryan Station Road over to the existing sidewalk in front of the retail uses. He then said that the applicant will be providing a covered sidewalk along the front of the Kroger building. As part of the Big-Box Design components, the exterior and interior sidewalks are also included in the requirements.

In terms of the internal pedestrian connection, Mr. Martin said that the staff believes a connection needs to be made leading to and from the front of Kroger. He said that the Bike and Pedestrian Planner was added to the list of recommendation in an attempt to find the best solution. In association with the pedestrian connection, a pedestrian amenity, such as an outdoor seating area should be provided. He said that another recommended amenity is a transit stop. The applicant is proposing to relocate the existing transit stop closer to Bryan Station Road, which will help with vehicular traffic along New Circle Road.

In reference to the rear wall, Mr. Martin stated that the Big-Box Design Guidelines require a landscape buffer to be provided. This requirement is in conjunction with the already existing conditional zoning restriction that was attached through the zone change for this property. He said that Article 18 of the Zoning Ordinance must be met for the landscaping requirements, and the issue on the site is that there are not a lot of existing trees separating the subject property from the Rookwood Subdivision.

Mr. Martin then said that as part of the design guidelines, all customer entrances into the building should be facing a public street; however, at this time an entrance facing New Circle Road can not be obtained. Therefore, a waiver to Guideline #5 is warranted, since there is not an entrance oriented to that street, at present.

In conclusion, Mr. Martin stated that the staff is recommending approval of DP 2010-22, subject to the following revised conditions:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Approval of street addresses as per e911 staff.
5. Urban Forester's approval of tree protection plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire's approval of emergency access and fire hydrant locations.
8. Division of Waste Management's approval of refuse collection.
9. Department of Environmental Quality's approval of environmentally sensitive areas (steep slopes)
10. ~~Correct notes #34 and #35.~~ Resolve the easement conflicts with the proposed addition prior to plan certification.
11. ~~Addition of name and address of developer.~~ Relocate internal sidewalk from Phase III to the approval of the Bike & Pedestrian Planner.
12. ~~Denote Final Record Plan designation for the property.~~ Complete sidewalk connection to Bryan Station Road.
13. ~~Denote construction access location(s).~~
14. ~~Denote parking aisle and space dimensions.~~
15. ~~Denote height of buildings on plan.~~
16. ~~Add existing easements per Final Record Plat.~~
17. ~~Addition of notes and bounds from Final Record Plat.~~
18. ~~Clarify parking requirements (no 15% reduction allowed per the B-6P zone).~~
19. ~~Clarify "existing" versus "proposed" retail at north end of shopping center.~~
20. ~~Discuss compliance with Big-Box Design Guidelines.~~

He added that the staff also recommended approval of the plan's compliance with the Big-Box Design Guidelines, for the following reason:

* - Denotes date by which Commission must either approve or disapprove plan.

1. The amended plan, as submitted, demonstrates considerable compliance with the adopted Big-Box Design Guidelines and will constitute an improvement to the overall compliance for the shopping center.

Planning Commission Questions – Ms. Copeland asked for a brief explanation of the circulation for the drive-through window. Mr. Martin illustrated the vehicular path, noting that the circulation is a one-way loop. Ms. Copeland asked if there should be something done for pedestrian traffic in this area. Mr. Martin said that there is a pedestrian crossing between the two buildings. Ms. Copeland asked if the pedestrian crossing will be marked or if possible traffic calming devices would be used. Mr. Martin said that traffic calming devices are not being shown, but those types of features will add to pedestrian safety. Ms. Copeland said that something should be added to make the vehicles aware of the pedestrian traffic crossing.

Representation – Bob Cornett, The Roberts Group was present representing the applicant; along with Danny Lethco, Real Estate Manager and Steve Adkins, Engineer. He said that the design of this property is similar to the Richmond Road Kroger Market Store. He noted that this property will not be a market place store due to the lack of square footage, but it is a fully developed shopping center. He then said that it is difficult for this property to meet all the Big-Box Design Guideline's, but these are only guidelines; therefore, there is some flexibility to work with.

As far as accessibility, Mr. Cornett said that they did contact LexTran for a site visit and they had indicated that there is no route on Bryan Station Road at this time. He then said that LexTran did indicate that there is a shorter connector route that travels from Bryan Station High School to New Circle Road, but the vacancy on that shuttle is low.

Mr. Cornett noted that for there is no sign of a pedestrian foot path along the Fifth/Third Bank property, so initially they did not show the sidewalk down Bryan Station Road. He directed the Commission's attention to a series of exhibits, and said that they are proposing to extend the sidewalk from the edge of the White Castle property down to the far corner of the Kroger Fuel Center on into the development. He then said that the sidewalk will then run along the Kroger car wash down a ramp ending at the roadway. From this point, there is not enough paved or dirt area to finish the construction of the sidewalk. He said that their approach is to paint a pedestrian route, and add marker, as well as a stop sign leading to the front of Kroger. He then said that the Bike and Pedestrian Planner has noted concerns with whether or not the traffic can be directed behind some of the parking stalls. According to the parking regulations, there are 10 surplus spaces left on the development. He said that to accommodate a raised sidewalk, there would be a decrease of 25 parking spaces, which makes the development noncompliant with regard to the parking regulations. He then said that if these issues were known when this development was built, it would have been taken care of then.

Mr. Cornett said that there is a struggle with complying with Article 18 for the tree protection plan. He said that if the landscape island were to be omitted, then the tree canopy requirement would become noncompliant. Had they known this issue ten years ago, the Big-Box Design Guidelines would have been addressed at that time. Mr. Cornett submitted a series of photographs to the Commission showing the existing landscaping, and said that these photographs show that there is a heavy tree canopy on the property.

Mr. Cornett noted that the 8' privacy fence was removed and replaced with new fencing. He said that the old fencing was recycled and placed behind the masonry wall along the Rookwood Subdivision. He then said that behind the recycled fence there is additional fencing and any damaged planks were replaced, as well.

As far as the easement is concerned, Mr. Cornett said that this project is very similar to the Beaumont project. He said that there are existing utility lines that run along the rear of the building; and there is an easement that ranges from 40' to 70,' which will need to be released from the utility companies, as well as released by the Urban County Council. He then said that the utility companies will not release an easement until those easements have been relocated and dedicated. He noted that this process does take time to complete and it must be done prior to any building permit being issued.

Note: Ms. Roche-Phillips left the meeting at this time.

Discussion – Ms. Copeland asked if the applicant would be agreeable to traffic calming devices. Mr. Cornett said that they would not have a problem in using traffic calming devices, with the exception of the paths where the carts must be pushed. Ms. Copeland commented that vehicular traffic may not be aware of the pedestrian crossing.

Ms. Gleason asked if the Commission is interested in a different textured pavement or an advance warning strip. Ms. Copeland said that something needs to be used to warn the vehicular traffic that this section of the property is a pedestrian zone. Ms. Gleason suggested that a highly visible or a textured crosswalk be used since this area will have a mixture of pedestrian and vehicular traffic. She said that as part of the sign-off, she will be requesting a sidewalk connection from Bryan Station Road to the Fifth/Third Bank.

Mr. Cornett said that they had a similar situation in the Leestown Shopping Center; and for that project, they had to demolish a portion of the building to accommodate the traffic, as well as use pedestrian signage and stop signs.

* - Denotes date by which Commission must either approve or disapprove plan.

Audience Comment – Mr. Penn asked if anyone in the audience wished to discuss this request. There was no response.

Action - A motion was made by Mr. Owens, seconded by Mr. Cravens, and carried 9-0 (Roche-Phillips and Brewer were absent) to approve DP 2010-22, subject to the recommendations provided by the staff; and denoting that this is in compliance with Big-Box Design Guidelines, as it was stated by the staff to include the waiver to Guideline 5.

- b. DP 2010-23: SHARKEY PROPERTY, UNIT 2-B (AMD) (7/4/10)* - located at 1758 Hatter Lane.
(Council District 2) **(EA Partners)**

Note: The purpose of this amendment is to add five single family lots and reduce the number of townhomes by one.

The Subdivision Committee Recommended: Postponement. There were questions regarding compliance with Article 9 setback requirements.

Should this plan be approved, the following amended requirements should be considered:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Approval of street addresses as per e911 staff.
5. Urban Forester's approval of tree protection plan.
6. Greenspace Planner's approval of the treatment of greenways and greenspace.
7. Division of Fire's approval of emergency access and fire hydrant locations.
8. Division of Waste Management's approval of refuse collection.
9. Denote construction access.
10. Denote height of townhouses.
11. Document open space compliance.
12. Correct typical townhome layout.
13. Resolve sanitary sewer conflict on lots 50 and 54.
14. Discuss compliance with Article 9 of the Zoning Ordinance.

Staff Presentation – Mr. Taylor directed the Commission's attention to the Amended Final Development Plan for the Sharkey Property, Unit 2-B (AMD), which is located at 1758 Hatter Lane. He noted that the Final Record Plat for this property was previously presented to the Commission. He oriented the Commission to the surrounding area, and noted that the subject property is located at the corner of Leestown Road and New Circle Road. He pointed out the location of the approved apartment complex, retail uses and the nearby single family residential area. He said that the purpose of this amendment is to add five single family lots and reduce the number of townhomes by one. He then said that the previous layout of the townhouses was oriented with the sides facing the single family area and the access easement was behind the townhouses. The applicant has reconfigured the design of the townhouses to have the fronts facing the single family homes with the access easement serving the rear of the townhouses and the single family houses. There will be a shared parking area in front of the townhouses.

Mr. Taylor said that the Subdivision Committee had recommended postponement, of this plan amendment. He said that there was a concern with whether or not this request was in compliance with Article 9 setback requirements. He then said that the staff has since met with the applicant and has clarified the issues listed on the agenda. As such, the staff is satisfied that this development plan does not qualify as a group residential project. The staff can now recommend approval, subject to the following revised conditions:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Approval of street addresses as per e911 staff.
5. Urban Forester's approval of tree protection plan.
6. Greenspace Planner's approval of the treatment of greenways and greenspace.
7. Division of Fire's approval of emergency access and fire hydrant locations.
8. Division of Waste Management's approval of refuse collection.
9. Denote construction access.
10. Denote height of townhouses.
11. Document openspace and lot coverage compliance.
12. Correct typical townhome layout.
13. Resolve sanitary sewer easement conflict on lots 50 and 54 prior to certification.
14. Document side yard compliance for proposed lot 60.
15. Discuss compliance with Article 9 of the Zoning Ordinance Provided the Planning Commission makes a finding per Article 6-8(m) of the Land Subdivision Regulations on the proposed access easement.

* - Denotes date by which Commission must either approve or disapprove plan.

Mr. Taylor directed the Commission's attention to condition number 15, and said that this finding relates to Article 6-8(m) of the Land Subdivision Regulations. He said that the townhouses do front on a public street, but the access is through an access easement in the rear.

Representation – Rory Kahly, EA Partners, was present representing the applicant. He said that they are in agreement with the staff's revised recommendations, and accepted the findings for the sole access easement and requested approval.

Audience Comment – Mr. Penn asked if anyone in the audience wished to discuss this request. There was no response.

Action - A motion was made by Ms. Richardson, seconded by Ms. Whitman, and carried 9-0 (Roche-Phillips and Brewer absent) to approve DP 2010-23, subject to the revised recommendations provided by the staff; and to accept the following findings for the sole access easement:

1. The requirements and standards for a public or private street would be excessive for the small number of townhouses proposed, within the overall plan design for this area.
2. The access easement as proposed meets the intent of the Land Subdivision Regulations to provide access to the proposed lots.
3. The few townhomes that will only have an alley to provide their access will front upon a green open space area, but will still have pedestrian access to a vehicular use area and off-street parking lot, intended for use by all of the townhouse residents and their guests.

- C. PERFORMANCE BONDS AND LETTERS OF CREDIT** – Any bonds or letters of credit requiring Commission action will be considered at this time. The Division of Engineering will report at the meeting.

Action - A motion was made by Mr. Owens, seconded by Ms. Richardson, and carried 9-0 (Roche-Phillips and Brewer absent) to approve the release and call of bonds as detailed in the memorandum dated May 13, 2010, from Ron St. Clair, Division of Engineering.

A recess was declared by the Chair at 4:10 p.m. and the meeting re-convened at 4:19 p.m.

- V. ZONING ITEMS** - The Zoning Committee met on Thursday, May 6, 2010, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Frank Penn, Joan Whitman, and William Wilson. The Committee reviewed applications, and made recommendations on zoning items as noted.

A. PUBLIC HEARING ON ZONING ORDINANCE TEXT AMENDMENT REQUEST

Note: The Planning Commission considered this item at its April 22, 2010, meeting and voted to continue this hearing to May 13, 2010.

1. **ZOTA 2010-1: AMENDMENTS TO ARTICLES 1, 7, AND 8 TO REDEFINE "FAMILY" AND OTHER DEFINITIONS; TO DEFINE AND REQUIRE CONDITIONAL USE PERMITS FOR A "FUNCTIONAL FAMILY;" AND TO ELIMINATE "THE KEEPING OF ROOMERS OR BOARDERS" IN SINGLE AND TWO-FAMILY RESIDENTIAL ZONES** (5/25/10)* – a petition for a Zoning Ordinance text amendment to Article 1-11 to modify the definitions of "boarding house," "lodging house," "family," "dwelling, single-family," and "dwelling, two-family;" to add definitions of "functional family" and "fraternity or sorority house;" to add a new section to Article 7 pertaining to the process before the Board of Adjustment to obtain a conditional use permit as a functional family; and to amend Article 8-5(c) to eliminate the keeping of boarders as an acceptable accessory use.

INITIATED BY: Urban County Council

PROPOSED TEXT: (Note: Text underlined is an addition, while text ~~dashed through~~ is a deletion to the current Zoning Ordinance.)

Article 1: General Provisions and Definitions

1. MODIFY THE FOLLOWING CURRENT DEFINITIONS in ARTICLE 1-11:

BOARDING HOUSE – A residential building, or part thereof, with sleeping rooms available for hire with or without meals to five (5) or more persons, primarily not transients. ~~Where kitchen facilities, cooking equipment or provisions for the same are included in a sleeping room, such room shall be deemed a dwelling unit.~~

LODGING HOUSE – A residence for adults living together, not as a family, but in a congregate living arrangement, characterized by one or more of the following:

- (a) ~~meals and food costs are not shared,~~
- (b) ~~residents do not have unrestricted access to all parts of the residence,~~

* - Denotes date by which Commission must either approve or disapprove plan.

- ~~(c) bedrooms comprise sixty percent (60%) or more of the space within the residence;~~
- ~~(d) bedroom doors have keyed locks or deadbolt locks; and~~
- ~~(e) rent is pooled by the residents and paid to the owner or owner's agent. (The owner or owner's agent may or may not be one of the residents.)~~

BOARDING OR LODGING HOUSE - A residential building or part thereof for five (5) or more adults living together, not as a family or housekeeping unit. In identifying this use, the following factors shall be considered:

- (a) meals and/or food costs are typically not shared;
- (b) rent is established by leases to individuals or rents are based on charges assessed to each individual;
- (c) individual mailboxes are provided;
- (d) multiple utility meters or connections are present.

DWELLING, SINGLE FAMILY - A building occupied exclusively for residential purposes by one family or one housekeeping unit. This definition also includes a building occupied by five (5) or more unrelated individuals at any time within five (5) years prior to January 1, 2010 subject to the following:

- (a) the occupancy is restricted to six (6) or less unrelated individuals;
- (b) the use of the building as a rental dwelling has not been abandoned;
- (c) the building shall not be enlarged or expanded beyond the existing square footage as of January 1, 2010:
 - (1) by more than twenty-five percent (25%) unless the building has been expanded by twenty-five percent (25%) or more under a building permit issued on or after January 1, 2005, in which case, then by no more than five percent (5%); or,
 - (2) unless approved by the BOA as a conditional use after January 1, 2010.

DWELLING, TWO-FAMILY - A building occupied exclusively for residential purposes by two families or two housekeeping units commonly known as a duplex. Townhouses are not included in this definition. This definition also includes a building occupied by five (5) or more unrelated individuals in a unit at any time within five (5) years prior to January 1, 2010 subject to the following:

- (a) the occupancy of each unit is restricted to six (6) or less unrelated individuals;
- (b) the use of the building as rental dwellings has not been abandoned;
- (c) the building shall not be enlarged or expanded beyond the existing square footage as of January 1, 2010:
 - (1) by more than twenty-five percent (25%) unless the building has been expanded by twenty-five percent (25%) or more under a building permit issued on or after January 1, 2005, in which case, then by no more than five percent (5%); or,
 - (2) unless approved by the BOA as a conditional use after January 1, 2010.
- (d) the limitation on enlargement of the building set forth in (c) above shall not apply in the case of the addition of a second unit in a two-family (R-2) zone provided that both units thereafter conform to the limitation of four (4) unrelated persons per dwelling unit.

FAMILY - ~~A person living alone, or two or more persons customarily living together as a single housekeeping unit and using common kitchen facilities, but not including a group occupying a hotel; club; boarding, lodging, fraternity or sorority house; nursing home; rest home; orphanage; community residence; rehabilitation home or other similar building.~~

FAMILY or HOUSEKEEPING UNIT - A person living alone, or any of the following groups living together and sharing common living and kitchen facilities:

- (a) Any number of persons related by blood, marriage, adoption, guardianship, or other duly authorized custodial relationship;
- (b) Four (4) or fewer unrelated persons;
- (c) Two (2) unrelated persons and any children related to either of them or under their care through a duly authorized custodial relationship;
- (d) Not more than eight (8) persons who are:
 - (1) Residents of a "home-like" residence as defined in KRS 216B.450
 - (2) "Handicapped" as defined in the Fair Housing Act, 42 U.S.C. Section 3602(h). This definition does not include those currently illegally using or addicted to a "controlled substance" as defined in the Controlled Substances Act, 21 U.S.C. Section 802(6).
- (e) Not more than six (6) unrelated individuals when in compliance with the provisions of the definitions of "dwelling, single family" or "dwelling, two-family" as contained in this Article.
- (f) A functional family as defined and regulated herein.

2. ADD THE FOLLOWING NEW TERMS AND DEFINITIONS to ARTICLE 1-11:

* - Denotes date by which Commission must either approve or disapprove plan.

FAMILY, FUNCTIONAL - A group of five (5) or more persons not otherwise meeting the definition of "family" who desire to live as a stable and permanent single housekeeping unit and who have received a conditional use permit from the Board of Adjustment. "Functional family" does not include:

- (a) residents of a boarding or lodging house;
- (b) fraternity, sorority or dormitory;
- (c) any lodge, combine, federation, coterie or like organization;
- (d) any group of individuals whose association is temporary or seasonal in nature;
- (e) any group of individuals who are in a group living arrangement as a result of criminal offenses.

FRATERNITY OR SORORITY HOUSE - A building used as a living and/or gathering quarters for students of a college, university, or seminary (not living in a "dormitory" as defined herein) who are members of a fraternity or sorority that has been or is seeking to be officially recognized by the college, university or seminary; or their guests. In identifying such use, the following factors shall be among those considered regardless of number of occupants:

- (a) signage or other indications that the building is used by a fraternity or sorority;
- (b) fraternity or sorority sponsored social activities such as meetings, parties, dances, or other gatherings; and,
- (c) events to which fraternity or sorority alumni or prospective members are invited.

A "Family or Housekeeping Unit" or "Boarding or Lodging House" as defined herein are excluded unless the use demonstrates specific characteristics of use as set forth above.

Article 7: Board of Adjustment

ADD A NEW SECTION PERTAINING TO THE BOARD OF ADJUSTMENT (ARTICLE 7-6(a)(8)):

- (8) The granting of a conditional use permit for a "functional family" shall be based upon application of the following considerations by the Board:
 - (a) Members of the functional family will share a strong bond or commitment to a single purpose (e.g., religious orders);
 - (b) Members of the functional family are not legally dependent on others not part of the functional family;
 - (c) Members can establish a legal domicile as defined by Kentucky law;
 - (d) Members share a single household budget;
 - (e) Members prepare food and eat together regularly;
 - (f) Members share in the work to maintain the premises;
 - (g) Members legally share in the ownership or possession of the premises;
 - (h) Members demonstrate stability in the arrangement as opposed to transient living arrangements.

Article 8: Schedule of Zones

ELIMINATE "THE KEEPING OF ROOMERS OR BOARDERS" BY A RESIDENT FAMILY AS A PERMITTED ACCESSORY USE IN THE SINGLE FAMILY AND TWO-FAMILY ZONES (REVISE ARTICLE 8-5(c)):

8-5(c) Accessory Uses (Uses and structures which are customarily accessory, clearly incidental and subordinate to permitted uses.)

1. Private garages, storage sheds, and parking areas.
2. Living quarters, without cooking facilities and not rented, for guests and employees of the premises.
3. Swimming pools and tennis courts.
4. ~~Keeping of not more than two roomers or boarders by a resident family, except where a bed and breakfast facility is provided; then no roomers or boarders shall be permitted.~~
5. 4. Agricultural uses, excluding commercial stock raising.
6. 5. Private, non-commercial parks and open space.
7. 6. Home office.
8. 7. A ground mounted satellite dish antenna, as regulated by Article 15-8.
9. 8. Family child care for up to six (6) children, provided that the total number of children living or being cared for on the premises shall not exceed six (6).

The Zoning Committee Recommended: **Approval of the Alternative text**, for the reasons provided by staff, excluding #2 below.

The Staff Recommends: **Approval**, for the following reasons:

1. The Zoning Ordinance's definition of "family" has remained virtually unchanged since 1953; thus, this proposed amendment is a timely and necessary update. Amendments to the definition of "family" and other related terms, as well as adding definitions for "functional family" and "fraternity or sorority house," will help to clarify the distinctions between

single-family and higher density land uses, will recognize changes in typical living arrangements in the 21st Century, and will be consistent with the Kentucky Building Code's regulation of "congregate living facilities."

2. The elimination of the "keeping of roomers or boarders by a resident family" as a permissible accessory use in Article 8-5(c) of the Zoning Ordinance is necessary for consistency and enforcement clarity in the Single Family and Two-Family Residential zones. Through the amended definition of "family," the ability for four or more unrelated persons to occupy any dwelling unit will remain. To leave Article 8-5(c) intact would then permit another two unrelated individuals to rent part of the space occupied by a resident family, which could result in up to six unrelated persons in any dwelling unit. This situation would circumvent the efforts to address the existing density issue.
3. The proposed amendments are compliant with the federal Fair Housing Act, which prohibits discrimination in housing based on race, color, national origin, religion, gender, disability or familial status. Providing an avenue for a group of individuals to be recognized as the functional equivalent of a family by the Board of Adjustment will allow for case-by-case evaluation of individual circumstances, as necessary.

Staff Presentation - Ms. Wade directed the Commission's attention to the revised Staff Report for ZOTA 2010-1, and noted the Planning Commission considered this item at their April 22, 2010, public hearing and voted to continue it to today's meeting.

Ms. Wade stated that since the April 22nd hearing, the staff had received a letter of support from The Fayette Alliance Group, which she circulated to the Commission. Within the letter, it states The Fayette Alliance is also concerned about the elimination of the keeping of roomers and boarders as a permitted accessory use in the single family and two-family Residential zones, and recommends that permitted accessory use be changed to conditional use.

Ms. Wade then stated that since the April 22, 2010, public hearing, the Planning Commission further discussed the amendment to Articles 1, 7 and 8 of the Zoning Ordinance at their April 29th work session. She said that during the Work Session, the Commission had suggested several minor changes to the original text that was forwarded by the Urban County Council, and discussed the possibility of drafting a statement to document the Commission's concerns with amending Article 8-5 of the Zoning Ordinance. She noted that after the Work Session, the staff had taken the original text that was forwarded by the Urban County Council, and drafted an alternative text, as well as a Resolution, that were then presented to the Zoning Committee last week on May 6th. She said that the Zoning Committee had reviewed the alternative text and further made changes to be presented to the full Commission today. These changes are shown as ***bold italicized text*** on the staff exhibit (attached as an appendix to these minutes).

BOARDING OR LODGING HOUSE - A residential building or part thereof for five (5) or more adults living together, not as a family or housekeeping unit. In identifying this use, ***one or more of*** the following factors shall be considered:

- (a) meals and/or food costs are typically not shared;
- (b) rent is established by leases to individuals or rents are based on charges assessed to each individual;
- (c) individual mailboxes are provided;
- (d) multiple utility meters or connections are present.

DWELLING, SINGLE FAMILY - A building occupied exclusively for residential purposes by one family or one housekeeping unit. ***Townhouses are included in this definition.***

[Line break]

This definition also includes a building occupied by five (5) or more unrelated individuals at any time within five (5) years prior to January 1, 2010 subject to the following:

- (a) the occupancy is restricted to six (6) or less unrelated individuals;
- (b) the use of the building as a rental dwelling has not been abandoned;
- (c) the building shall not be enlarged or expanded beyond the existing square footage as of January 1, 2010:
 - (1) by more than twenty-five percent (25%) unless the building has been expanded by twenty-five percent (25%) or more under a building permit issued on or after January 1, 2005, in which case, then by no more than five percent (5%); or,
 - (2) unless approved by the BOA as a conditional use after January 1, 2010.

DWELLING, TWO-FAMILY - A building occupied exclusively for residential purposes by two families or two housekeeping units commonly known as a duplex. Townhouses are not included in this definition.

[Line break]

This definition also includes a building occupied by five (5) or more unrelated individuals in a unit at any time within five (5) years prior to January 1, 2010 subject to the following:

- (a) the occupancy of each unit is restricted to six (6) or less unrelated individuals;
- (b) the use of the building as rental dwellings has not been abandoned;
- (c) the building shall not be enlarged or expanded beyond the existing square footage as of January 1, 2010:
 - (1) by more than twenty-five percent (25%) unless the building has been expanded by twenty-five percent (25%) or more under a building permit issued on or after January 1, 2005, in which case, then by no more than five percent (5%); or,
 - (2) unless approved by the BOA as a conditional use after January 1, 2010.

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(d) the limitation on enlargement of the building set forth in (c) above shall not apply in the case of the addition of a second unit in a two-family (R-2) zone provided that both units thereafter conform to the limitation of four (4) unrelated persons per dwelling unit.

Ms. Wade directed the Commission's attention to the draft Resolution, and said that it reflects the Commission's work, as well as their concerns regarding the amendment to Article 8-5(c) of the Zoning Ordinance. She noted that Article 8-5(c) relates to the elimination of the rental of living space to one or two roomers or boarders by a resident family as an accessory use in single-family and two-family zones.

Ms. Wade noted that the Zoning Committee had recommended approval of the proposed alternative text, and added the following language to the draft Resolution, at the end of Section 1:

"The Commission also wishes to express its opinion that owner occupancy of the premises should be an important consideration in the allowance of such use."

Ms. Wade said that the above language would relate to the Board of Adjustment's consideration of a conditional use rather than eliminating renters and boarders completely.

Audience Comments - Chairman Penn reminded the Commission that this is a continued item from the April 22, 2010, hearing. He asked if anyone in the audience or on the Commission wished to comment on or further discuss this item. No one in the audience approached the podium to speak.

Planning Commission Discussion – Ms. Copeland said that during the staff's presentation "owner-occupant" was used in relation to the Board of Adjustment's consideration; however, the draft Resolution does not refer to "owner-occupant," but it does refer to "resident family." She asked for further clarification. Ms. Wade directed the Commission's attention to Section 1 of the Resolution, and said that Section 1 reads: "The Commission wishes to express its opinion that the Council should consider an alternative that would allow the keeping of up to two roomers or boarders by a resident family as a conditional use, thereby making such use subject to review by the Board of Adjustment in single family and two family zones." She further said that the Zoning Committee recommended inserting additional language to Section 1 that reads: "The Commission also wishes to express its opinion that owner occupancy of the premises should be an important consideration in the allowance of such use."

Mr. Penn asked for clarification on the process of moving this item forward. Mr. King said that this text amendment was initiated by the Urban County Council. He said that the Commission's action today will fulfill the requirement of State statute, which includes the Commission holding a public hearing and conveying recommendations back to the Lexington-Fayette Urban County Council within 60-days. The staff has prepared the necessary documentation, and believes that the Commission can make a recommendation at this time. He noted that the previously presented alternative text makes no changes to the substance of the Urban County Council's original initiation. He said that the changes that are proposed to the original text amendment only clarify the Commission's review. The staff is comfortable with advising the Commission to submit the alternative text to the Council in the Final Report. He noted that should the Commission pass the Resolution, it will also be submitted to the Urban County Council with the Final Report. He said that the Final Report will convey the Commission's comments for the record, and the Urban County Council can then consider any additional changes, or refer the text amendment to a committee for further review.

Ms. Wade noted that she had a prior conversation with Ms. Boland, and there was a concern from some members of the Commission with the second finding on the Revised Staff Report, and that as a result the Commission may not wish to adopt this finding. Ms. Boland explained that there is sufficient information within the Resolution and suggested that the Commission make the language very clear and concise to the Urban County Council. Referring to the Resolution, she suggested revising the third WHEREAS clause to read:

"WHEREAS, the Planning Commission supports the intent of this legislation and has made a recommendation of approval of these proposed text amendments with some minor changes suggested as shown in the attached alternative text."

Ms. Boland said that the previously submitted alternative text will be incorporated with and become part of the Resolution. She then said that the Commission can then forward their recommendation simply by a motion that adopts the Resolution. She noted that this will include the Commission's discussions and suggestions within a single document, in addition to the Final Report that will be submitted to the Urban County Council.

Mr. Owens commended the very good work done on this text amendment. He said that the Urban County Council and the Planning Commission had considered and discussed the parking issue, and he would like to see further consideration on this matter at some point in time. He asked how this issue could be conveyed to the Urban County Council. Mr. King said that the Commission could convey that concern by making an addition to the Resolution; however, he noted that the same group that worked on this text amendment had been in front of the Urban County Council and indicated that they felt parking was an important concern. He noted that there are future plans for that group to meet and discuss the parking issue further. Ms. Wade

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indicated that the parking concerns are also noted in the April 22, 2010 Planning Commission minutes and in the Revised Staff Report.

Action - A motion for approval of the alternative text was made by Ms. Richardson, seconded by Ms. Whitman and carried 9-0 (Roche-Phillips and Brewer absent) for ZOTA 2010-1: Amendments to Articles 1, 7, and 8 to redefine "Family" and other definitions; to define and require conditional use permits for a "Functional Family;" and to eliminate "the keeping of roomers or boarders" in single and two-family residential zones; adding a definition for a "fraternity or sorority house," and approval of the Resolution that was prepared by the Division of Planning, which expresses the Commission's opinion and concerns.

VI. COMMISSION ITEMS - The Chairman will announce that any item a Commission member would like to present will be heard at this time.

- A. CANCELLATION OF UPCOMING MEETING** – There are no pending zoning applications to present to the Planning Commission at their next scheduled meeting. Therefore, the staff would request that the Commission take action to amend the Official Meeting & Filing Schedule to cancel the public hearing for the Zoning Items previously scheduled for Thursday, May 27, 2010, at 1:30.

Mr. Sallee stated that because there are no pending zoning applications to present to the Planning Commission at the May 27, 2010, meeting, the staff would request that the Commission take action to amend the Official Meeting & Filing Schedule to cancel the public hearing previously scheduled.

Action: A motion was made by Ms. Whitman, seconded by Mr. Owens, and carried 8-1 (Holmes opposed; Roche-Phillips and Brewer absent) to amend the Official Meeting and Filing Schedule for 2010, to cancel the May 27, 2010, meeting.

- B. CHANGE TO STARTING TIME OF MAY 20 WORK SESSION** – The Urban County Council has scheduled a meeting of their "Committee of the Whole" for 3:00 PM on May 20, in the Council Chamber. As the Commission may need more than 90 minutes to conduct their Work Session that afternoon, the staff might suggest that the Commission consider amending their Official Meeting & Filing Schedule to move the starting time for that Work Session to 1:00 PM.

Mr. Sallee stated that the Urban County Council had scheduled a meeting of their "Committee of the Whole" for 3:00 PM on Thursday, May 20, in the Council Chamber. As a result, the staff suggested that the Commission consider amending their Official Meeting & Filing Schedule to move the starting time for the Work Session to 1:00 PM.

Action: A motion was made by Mr. Owens, seconded by Ms. Richardson, and carried 8-1 (Wilson opposed; Roche-Phillips and Brewer absent) to amend the Official Meeting and Filing Schedule for 2010, to change the starting time of the May 20, 2010, Work Session to 1:00 PM.

- C. CANCELLATION OF UPCOMING ZONING COMMITTEE MEETING** – There are no pending zoning applications to present to the Zoning Committee at their next scheduled meeting. Therefore, the staff would request that the Commission take action to amend the Official Meeting & Filing Schedule to cancel the Zoning Committee meeting previously scheduled for Thursday, June 3, 2010, at 1:30 PM.

Mr. Sallee stated that since there are no pending zoning applications to present to the Zoning Committee at their next scheduled meeting; therefore, the staff would request that the Commission take action to amend the Official Meeting & Filing Schedule to cancel the Zoning Committee meeting previously scheduled for Thursday, June 3, 2010, at 1:30 PM.

Action: A motion was made by Mr. Holmes, seconded by Mr. Wilson, and carried 6-3 (Cravens, Paulsen and Richardson opposed; Roche-Phillips and Brewer absent) to amend the Official Meeting and Filing Schedule for 2010, to cancel the Zoning Committee meeting originally scheduled for June 3, 2010.

VII. STAFF ITEMS - Staff items, if any, will be considered at this time.

- A. HOUSE BILL 55 TRAINING OPPORTUNITY** - There will be an APA audio conference on Wednesday, May 26, 2010 from 4:00 until 5:30 in the Division of Planning Conference Room on the 7th floor of the Phoenix Building. The title of this training session is "Design Review for Officials" and will count toward 1.5 hours of training credit.

Ms. Rackers informed the Commission that there would be an APA audio-conference in the Division of Planning Conference Room on Wednesday, May 26, 2010, beginning at 4:00 p.m. The title of this conference is "Design Review for Officials" and will count toward 1.5 hours of training credit for the Planning Commission members, as well as staff.

VIII. AUDIENCE ITEMS – Citizens may bring a planning related matter before the Commission at this time for general discussion or future action. Items that will **NOT** be heard are those requiring the Commission's formal action, such as zoning items for early rehearing, map or text amendments; subdivision or development plans, etc. These last mentioned items must be filed in advance of this meeting in conformance with the adopted filing schedule.

* - Denotes date by which Commission must either approve or disapprove plan.

IX. **NEXT MEETING DATES** -

Work Session, Thursday, 1:00 p.m. , 2 nd Floor Council Chambers.....	May 20, 2010
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (Phoenix Building)	May 26, 2010
Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers (Cancelled) ...	May 27, 2010
Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (Phoenix Building)	June 3, 2010
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (Phoenix Building) (Cancelled) ...	June 3, 2010
Subdivision Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers	June 10, 2010

IX. **ADJOURNMENT** - There being no further business, a motion was made to adjourn the meeting at 4:37 p.m.

Frank Penn, Chair

Mike Owens, Secretary